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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~1269~~. 824 499

THURBER, WHYLAND AND COMPANY, APPELLANTS,

vs.

A. W. WOODWARD AND A. W. LANGDON.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED FEBRUARY 20, 1885.

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1 Pleas in the circuit court of the United States for the southern district of Iowa, central division, at the term begun and holden at the United States court-house, in the city of Des Moines, in said district, on the 21st day of October, A. D. 1884, before Hon. J. M. Love and Hon. O. P. Shiras, judges.

2 Be it remembered that heretofore, to wit, on the 8th day of December, 1884, a transcript of record from the district court of Marshall county, Iowa, was filed in the clerk's office of the United States circuit court for the southern district of Iowa, central division, in a certain cause wherein A. W. Woodward and others were plaintiffs, and the Marshall Canning Company and others were defendants, which said transcript is in the words and figures following, to wit:

3 *Petition in Equity.*

In the District Court of the State of Iowa and for Marshall County. December Term, 1884.

A. W. WOODWARD & A. W. LANGDON

vs.

MARSHALL CANNING COMPANY, THURBER, WAYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, WILLIAM J. MORRISON.

Par. 1.

The plaintiffs state that the defendant, The Marshall Canning Company, is a corporation for pecuniary profit, duly organized under the laws of the State of Iowa, for the purpose of raising, or procuring to be raised, preparing, canning, and packing for market corn, tomatoes, and any other vegetables and fruits which may, in the discretion of the proper officers, be desirable to prepare and

4 market, & with its buildings and *and* principal place of business at Marshalltown, Iowa.

That the authorized capital stock of said company is $50,000.00; and the capital stock subscribed and actually paid in is the sum of $24,500.00, of which H. C. Young, of Marshalltown, Iowa, owns $8,500.00; A. T. Brichard, of the same place, $5,000.00; plaintiff, A. W. Langdon, $8,500.00; and A. W. Woodward, of Chicago, Illinois, $2,500.00. That the directors of said company are A. W. Langdon, H. C. Young, and A. T. Brichard; and its officers are H. C. Young, president, and A. T. Brichard, secretary and treasurer.

That the assets of said company are as follows:

The real estate, particularly described in copy of mortgage hereto annexed as Exhibit A, containing about seventeen $\frac{48}{100}$ acres

5 of land, upon which are erected large and commodious buildings, with a capacity of putting up —— cases of goods during a season, said real estate being of the actual value of $13,240.50; a large amount of machinery and apparatus for carrying on said canning business, of the value of $5,675.00, making the total value of said real estate and machinery the sum of $18,915.00.

The said company has also on hand merchandise on hand, being goods of its own packing, in amount and value, as follows, viz.:

12,215 cases of corn, @ 1.50		18,322 50
12,935 " " tomatoes, @ 1.50		19,402 50
303 " " succotash, 2.00		606 00
473 " " beans, 1.30		617 90
Total merchandise		$38,948 90

Thus making the total assets of said company, in real estate, machinery, & merchandise, the sum of $57,863.90.

Par. 2.

6 The liabilities of said company are substantially as follows:

To N. Lucas estate (or to his widow)	8,000 00
Mrs. C. E. Webster	1,000 00
Thurber, Wyland & Co	16,252 00
" " " bal. on $25,000.00	3,438 97
Notes given to J. K. Armsby & Co. & transferred to others	36,005 00
Bills for tin cans	3,499 00
Bills for sundries, coal, &c.	5,200 00
For corn-cutting machine	500 00
To First Nat'l B'k, Marshalltown	2,000 00
Total liabilities	$75,894 97

Par. 3.

Plaintiffs further say that article 3 of the articles of incorporation of said company is as follows.

The highest amount of indebtedness at any one time shall not exceed in amount two-thirds of its capital stock. It is also provided by the general incorporation laws of the State of Iowa, that in no case shall the indebtedness of a corporation like said Canning Company exceed two-thirds of its capital stock. Article 14 of the

7 articles of incorporation of said company is as follows:

It shall be competent to mortgage the property of the company to an amount not exceeding one-half of the capital stock actually paid in, but a majority of the stockholders by shares must first vote in favor thereof at a regular or special meeting.

Par. 4.

The plaintiffs further aver that on the 28th day of July, A. D. 1884, when the actual indebtedness of said company was at least $45,000.00, $26,000.00 of which was secured by mortgage on the personal property and real estate then owned by the defendant Canning Company, and without any authority from said stockholders or board of directors, the defendant, H. C. Young, gave or

8 pretended to give to the defendant, Thurber, Wayland & Co., a copartnership, doing a wholesale grocery business in New

York city, a promising note of $25,000.00, due in six months after date, and bearing eight per cent. interest, and secured or pretended to secure it by both real estate and chattle mortgage on all the real and personal property of said Canning Company, said note being given to said firm to secure it for money which it proposed to loan to said Canning Company, with which to put up the pack of 1884, copies of said mortgage are hereto annexed, the real estate one being marked "A," and the chattle marked "B." That said firm of Thurber, Wyland & Co. has advanced under said $25,000.00, and under a written con-
9 tract to advance money to carry on said canning business, the sum of $——, all of which has been actually paid back to said firm by said company in canned goods at market prices, except the sum of $3,438.91 mention- on the list of liabilities of said company hereinbefore set forth, which sum, with interest thereon as provided in said note and contract, these plaintiffs ask the court to fully pay to said firm out of the canned goods of said company now on hand, and fully repay said firm for all money actually advanced as aforesaid.

Par. 5.

Plaintiffs further show unto the court that at the date of the execution of the note and mortgages mentioned in the proceeding paragraph, without vote of the stockholders of said company, and
10 while the indebtedness of the company exceeded its entire capital stock, and without any power or authority, H. C. Young executed and delivered to said firm of Thurber, Wyland & Co. another note of $16,252.00, and secured or pretended to secure the same by the two mortgages above referred to as Exhibits A & B.

That for the said $16,252.00 note thus given said Canning Company received no consideration whatever, other different or more that was and has been advanced under said $25,000.00 note and home agreement as hereinbefore set forth. That a worthless account and claim against J. K. Armsby & Co., an insolvent grocery firm in Chicago, Illinois, was ostensibly made the consideration for said note, but in fact said account is of no value whatever. That
11 -he pretended object for which said note was given is wholly without the scope of the corporate business of said company, and said note is absolutely null and void.

Par. 6.

That before the giving of said note and mortgage it was
12 corruptly, usurially, and unlawfully agreed between said H. C. Young and said Thurber, Wyland & Co. that said Thurber, Wyland & Co. would advance the money to can and pack the crop of 1884; that all money advanced for that purpose should be repaid to them, with interest at 8 per cent., and that said company, acting through said H. C. Young, president, would give said note of $16,252.00, and secure the same with said mortgages as a bonus for said loans and advances, and said $16,252.00 in fact wholly usurious and void, the assignment of said account being only a cover for usury.

Par. 7.

Plaintiffs further say, that at or near the time of the execution of said $16,252.00 note the said H. C. Young, claiming to act for said
13 Canning Company, entered into a written contract with said Thurber, Wyland & Co. to turn over to them all the property and goods of said Canning Company, as a trustee, to pay themselves out of the goods of said company all money the firm had advanced, and the $16,252.00 note aforesaid, a copy of which contract is hereto annexed, marked O, and made a part hereof.

That under the terms and conditions of said contract said Thurber, Wyland & Co., through their agent, William J. Morrison, a defendant herein, have taken possession of the buildings and personal property of said company, and claim to be holding said property as a trustee to pay themselves for money advanced and for $16,252.00, not any of which has ever been paid to said
14 company.

But these plaintiffs charge the fact to be that neither said H. C. Young or the company itself, by note, even had or have authority to place said property in the hands of a trustee; and said contract is absolutely null and void and beyond the corporate powers of the company, its board of directors, or officers.

Par. 8.

Plaintiffs also say they had no knowledge that said $16,252.00 note and said contract of trusteeship had been executed and given by said Canning Company or its president till just the commencement of this suit, and in no manner consented to the giving
15 of said note and contract or authorized the giving thereof; that the giving of said note and contract is entirely outside the business scoop of said corporation—were given—the indebtedness exceeded $\frac{2}{3}$ of the capital stock of said company, and when the property of the company was mortgaged for more than half its value, and were never authorized by vote of the stockholders of said company.

Par. 9.

That the said defendant, Thurber, Wyland & Co., through their said agent, William J. Morrison, are now in possession of all the canned goods belonging to said Canning Company under said contract of trusteeship, and are rapidly billing and shipping out said goods, with the purpose and intent of paying out of said
16 goods said $16,252.00, note, to the great prejudice of these plaintiffs, said Canning Company, and the other creditors of said company, and will thus ship and apply said goods, unless restrained by legal proceedings; that these plaintiffs will be damaged thereby in the sum of $8,000.00, for which they have no adequate remedy at law, and hence bring this action in equity. The said Thurber, Wyland & Co. will also, as these plaintiffs verily believe, seize said goods under said chattle mortgage, and sell or attempt to sell the same under the power of sale in said mortgage contained, unless enjoined from so doing.

Par. 10.

These plaintiffs also ask that the account against J. K. Armsby & Co. by Thurber, Wyland & Co., assigned to said Canning Company, be reassigned to them, be returned to them, and that said Thurber, Wyland & Co. be placed *in statu quo*. Wherefore plaintiffs ask that said promissory note of $16,252.00 be annulled and canceled, and that said mortgage, so far as they secure said note, be set aside and canceled *and canceled* of record; that the said defendant, Thurber, Wyland & Co., be restrained and enjoined from further shipping, handling, or in any manner disposing of said canned goods by themselves or agent or agents, or from retaining or holding possession thereof, and from seizing and selling said goods under said chattle mortgage, or selling, assigning, or transferring said mortgage & the $16,252.00; that said Canning Company and its president, H. C. Young, and other officers be restrained and enjoined from further incumbering the property of said Canning Company; that said contract of trusteeship be cancelled and set aside; that out of the proceeds of said goods the legal and just debts of said Canning Company be first paid, and out [of] the residue a dividend be made to the stockholders of said company, and that judgment be rendered therefor; that a temporary writ of injunction be issued on this case to restrain the defendants as herein prayed, and that the same be made perpetual on final hearing; that a receiver be appointed to take possession of said buildings and property, subject to the order of court, till final hearing, and preserve and sell the same and keep the proceeds, as may be for the best interests of the parties litigant, and that plaintiffs have such other and further relief as may be just and equitable in the premises and cost of suit.

(Signed) COSWELL & MEEKER,
Att'ys for Plaintiffs.

STATE OF NEW YORK, *Erie County:*

I, A. W. Langdon, on oath say: I am one of the plaintiffs in the above-entitled suit; that I have heard the foregoing petition read; know its contents, and the obligations therein made are true, as I verily believe.

(Signed) A. W. LANGDON.

Subscribed and sworn to before me and in my presence by A. W. Langdon, this 13th day of October, 1884.

(Signed) FRANK T. MOULTON,
Notary Public.

This indenture, made the 28th day of July, A. D. eighteen hundred and eighty-four, between the Marshall Canning Company, of Marshall county, and State of Iowa, of the first part, and Thurber, Wyland & Co., of New York county, and State of New York, of the second part, witnesseth, that the said part of the first part, for and in consideration of the sum of forty-one thousand

two hundred fifty-one & $\frac{59}{100}$ dollars, the receipt of which is acknowledged, do by these presents grant, bargain, sell, and convey unto the said party of the second part, its heirs and assigns, forever, the following described real estate, lying and being situated in the
22 county of Marshall, and State of Iowa, to wit: Beginning at a point one hundred & five (105) rods twelve & $\frac{4}{100}$ (12 & $\frac{4}{100}$) links south, and ten (10) rods and $\frac{4}{100}$ ($\frac{4}{100}$) links east of the northwest corner of the east half of the northwest quarter of section thirty-six (36) in T. P. N. Y., R. 18, being at south line of tract sold M. Healin, running thence east on south line of same thirty-five (35) rods and nine and $\frac{1}{2}$ ($9\frac{1}{2}$) links to center of Linn creek, thence following said creek northeasterly to east line of the northwest quarter of said section, thence south sixty-six (66) rods and twenty-two links to north line of public highway, thence north ($81\frac{1}{2}°$) west, on north line of highway seventy (70) rods and
23 one link to east line of Binford & Webster's Addition, thence north 23 (twenty-three) rods eighteen and $\frac{1}{5}$ ($18\frac{1}{5}$) links to beginning, containing $16\frac{7}{10}$ acres, being lot 4 of subdivision of N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and all of lot 2 (two) of subdivision of G. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of said section (36) not heretofore conveyed by said first party; also out lot C of Binford & Webster's Addition to Marshall; also the the tract beginning at the northwest corner of out lot C aforesaid, and running north sixty-six (66) feet to southwest corner of that part of out lot B of said addition conveyed by said Webster to said Healim; thence east $164\frac{1}{6}$ feet to east line of said out lot B; thence south sixty-feet to northeast corner of said out lot C; thence west one hundred and sixty-five (165) feet to beginning, con-
24 taining in last tract & said out lot C $1\frac{45}{100}$ acres. To have and to hold the premises above described, with all the appurtenances thereto belonging, unto the said party of the second part, and to its heirs and assigns, forever. The said party of the first part hereby covenanting that the above-described premises are free from any incumbrance, except six thousand dollars held by S. R. Lucas, and it will warrant and defend the title unto the said party of the second part, its heirs and assigns, against all persons whomsoever lawfully claiming the same: Provided always, and these presents are upon this express condition, that if the said Marshall Canning
25 Company, its heirs, executors, or administrators, shall pay, or cause to be paid, to the said Thurber, Whyland & Co., its executors, administrators, or assigns, the sum of sixteen thousand two hundred & fifty-one & $\frac{59}{100}$ dollars on 28 day of January, 1885, twenty-five thousand 28 day of January, 1885, with interest thereon at the rate of eight per centum per annum, payable annually, all interest to bear eight per cent. interest after maturity from year to year until paid, according to the tenor and effect of the two promissory notes of the said Marshall Canning Company, payable to the order of Thurber, Whyland & Co., after date, and bearing even date herewith, then these presents to be void; otherwise, to remain
26 in full force. And it is further agreed that if default shall be made in the payment of said sums of money, or any part thereof, principal or interest, or if the taxes assessed on the above-

described real estate shall remain unpaid, and for the space of three months after the same are due and payable, then the whole indebtedness shall become due, and then the party of the second party, heirs and assigns, may proceed by foreclosure, or in any other lawful mode, to make the amount of said note, together with all interest and costs, and all taxes and assessments accrued on said real estate, together with a reasonable fee for plaintiffs' attorney
27 out of said real estate. The $25,000.00 note above referred to is given to secure the mortgage herein, for short time loans and advance of money to mortgagor, as shown by contract on back thereof.

And —— ——, wife of said —— ——, hereby relinquishes right of dower in the real estate herein mentioned, subject to the above reservations and conditions.

In testimony whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written.

[s. s.] MARSHALL CANNING COMPANY,
By H. C. YOUNG, *President.*

28 STATE OF IOWA, } *ss:*
Marshall County, }

Be it remembered that on the 28 day of July, A. D. 1884, before me, the undersigned, as notary public in and for said county, came Henry O. Young, as president of the Marshall Canning Company, of Marshalltown, Iowa, to me personally known to be the identical person whose name [is] subscribed to the foregoing deed as president of said company, grantor, and acknowledged the instrument to be the voluntary act and deed of said company, and that said company executed the same for the purpose therein mentioned & real of said company is offered.

Witness my hand and notarial seal, the day and year last above written.

(Signed) J. T. MEEKER,
Notary Public.

29 STATE OF IOWA, *Marshall County*:

Be it remembered that on this 28 day of July, A. D. 1884, before me, T. Binford, a notary public in and for said county, came H. C. Young, the president of the Marshall Canning Company, of Marshalltown, Iowa, to me personally known to be the identical person whose name is affixed to this mortgage, as the president of the grantor, the president herein mentioned, and who by me being duly sworn, deposes and say- that he resides in Marshalltown aforesaid, in said county; that he is the president of the Marshall Canning Company; that the seal affixed to the within indentures is the cor-
30 porate seal of said Marshall Canning Co., and was affixed to the within indentures by order of said directors, for the uses therein expressed, and that he did by like order *did* subscribe his name thereto as president of the Marshall Canning Co., and that

said instrument is his own true and voluntary act and deed, as well as that of the Marshall Canning Company.

[s. s.] (Signed) J. T. MEEKER,
Notary Public, Marshall Co., Iowa.

Mortgage from The Marshall Canning Company to Thurber, Whyland & Co.

STATE OF IOWA, } ss:
Marshall County, }

Filed for record the 5th day of Aug., A. D. 1884, at 2.45 o'clock p. m., and recorded in Book 128, page 341.

L. A. JENNINGS,
Rec. of Marshall County,
By J. D. VILES, *Deputy.*

31 STATE OF IOWA, } ss:
Marshall County, }

I, L. A. Jennings, county recorder within and for said county, do hereby certify that the within is a true and correct copy of the real estate mortgage from the Marshall Canning Company to Thurber, Whyland & Co., dated July 28, 1884, and found recorded in real estate mortgage, vol. 128, page 341, as the same appears in my * * *

32 *Chattle Mortgage.*

Know all men by these presents, that I, Marshall Canning Company, of the county of Marshall, and State of Iowa, in consideration of the sum of forty-one thousand two hundred and fifty-one & $\frac{59}{100}$ dollars to me in hand paid by Thurber, Whyland & Company of New York city, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and do by these presents grant and convey unto the said party of the second part, his lieirs, assigns, etc., the following goods and chattels, to wit, nine cutting machines, two tin cutting machines, two Morrill & Soule's patent corn cookers, six retorts & fixtures, two boilers, (60
33 horse-power engine), one fifteen horse-power engine, all belting, shafting, pulleys, tools, utensils, and implements of every kind and character, movable and unmovable, all tin cans, tin plate boxes, box stock, box lumber, tables, all material manufactured, unmanufactured, or in process of manufacture, all stock of every kind and character, manufactured, unmanufactured, or in process of manufacture, all of said goods, chattles, and property being in or on the building and premises known as the factory and grounds of the Marshall Canning Company, in Marshalltown, Marshall county, Iowa, also all canned goods an- tin cans which may be here-
34 after manufactured at, in, or on the premises, or which may hereafter be brought upon said premises, and all stock and material manufactured or unmanufactured, machinery, tools, fixtures, utensils, and implements of every kind hereof, or purchased

and brought upon said premises, be in transit thereto or manufactured thereon.

To have and to hold the same forever. And I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said Marshall Canning Co. shall pay to the said Thurber, Whyland & Company, its, his heirs, assigns, etc., his three promissory notes, dated July 28, 1884, and described as follows, to wit, one for sixteen
35 thousand two hundred and fifty-one and $\frac{59}{100}$ dollars, due six months after date, and one other note of $2,500, due six months after date, which last note is given to secure said Thurber, Whyland & Co. for loans and advances to be made by said Thurber, Whyland and Company to said Marshall Canning Company, as shown by contract on the back of said note, with interest at the rate of eight per cent. per annum according to the tenor thereof, then these presents to be void; otherwise, in full force.

And I, the said Marshall Canning Company, do hereby covenant and agree to and with the said Thurber, Whyland & Company that in case of default made in the payment of the above-
36 mentioned promissory note, or in case of my attempting to dispose of or remove from said county of Marshall the aforesaid goods and chattels, or any part thereof, or whenever the said mortgage- shall have cause, then in that case it shall be lawful for the said mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due, or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of such property; and Marshall Canning Company,
37 the said mortgagor, hereby further covenants and agrees with the said Thurber, Whyland & Company that in the event suit is brought on this mortgage for foreclosure thereof, then and in that case I covenant and agree to pay a reasonable amount as attorney's fees. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part. Said sale to take place on said premises, in the county of Marshall and State of Iowa, after giving at least ten days' notice thereof by posting up written notices in three public places in said county. And I hereby further authorize the person conducting said sale to adjourn the same
38 if deemed, in his opinion, necessary from time to time until said property be sold, and to give a bill of sale to the purchaser thereof which shall be conclusive as to the regularity of all proceedings connected herewith, and convey absolutely all of my right and title therein conclusive as to the regularity of all proceedings connected herewith, and convey absolutely all of my right and title therein.

Witness my hand and seal, this 28 day of July, 1884.

[s. s.] MARSHALL CANNING CO.,
By H. C. YOUNG, *President.*

39 STATE OF IOWA, } ss:
Marshall County, }

Be it remembered that on the 28 day of July, A. D. 1884, before me, the undersigned, a notary public in and for said county, personally appeared H. C. Young, president of the Marshall Canning Company, to me personally known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledged the instrument to be his voluntary act and deed, and the voluntary act and deed of the Marshall Canning Company.

Witness my hand and notorial —, the day and year above written.

J. F. MEEKER,
Notary Public.

40 STATE OF IOWA, } ss:
Marshall County, }

Be it remembered that on this 28th day of July, 1884, before me, T. Binford, a notary public in and for said county, came Henry C. Young, the president of the Marshall Canning Company, of Marshalltown, Iowa, to *be* personally known to be the identical person whose name is affixed to this mortgage as the president of the grantor, the corporation herein mentioned, and who, by me being duly sworn, deposes and say- that he resides in Marshalltown, Iowa, in said county; that he is the president of the Marshall Canning Company; that the seal affixed to the within *incesed* is the cor-
41 porate seal of said Marshall Canning Company affixed to the within indenture by order of said directors for the uses therein expressed; and that he did by like order subscribe his name thereto as president of Marshall Canning Company, and the said instrument is his own true and voluntary act and deed, as well as that of the Marshall Canning Company.

[s. s] J. F. MEEKER,
Notary Public, Marshall County, Iowa.

Chattle mortgage from Marshall Canning Co. to Thurber, Whyland & Co.

STATE OF IOWA, } ss:
Marshall County, }

Filed for record the 5th day of August, A. D. 1884, at 2.45 o'clock p. m., and recorded in book 134, on page 328.

L. A. JENNINGS, *Recorder.*

42 STATE OF IOWA, } ss:
Marshall County, }

I, L. Jennings, county recorder within and for said county, do hereby certify that the within and foregoing is a correct, true, and *verbatime* copy of the chattle mortgage from the Marshall Canning Company to Thurber, Whyland & Co., dated July 28th, 1884, and found recorded in chattle mortgage record 134, page 328, as the same appears in my office.

Witness my hand, this 11th day of October, A. D. 1884.

L. A. JENNINGS, *Co. Rec.*

EXHIBIT C.

43 Know all men by these presents, that we, Thurber, Whyland and Company, of New York, will agree with the Marshall Canning Company, of Marshalltown, Iowa, to advance them sufficient money, not to exceed twenty-five thousand dollars all told, during the packing season of 1884 and ——, to January 1st, 1885, providing they will repay us the debt they now owe us, $16,251.54, and the said advances previous to January 1st, 1885, and will obtain the consent of their creditors not to bring any suits or file any bills for the purpose of collecting their claims until after January 1st, 1885.

THURBER, WHYLAND & CO.

44 Know all men by these presents, that in consideration of the advances of twenty-five thousand dollars, during the packing season of 1884, to the Marshall Canning Company, to be — by Thurber, Whyland and Company, we hereby appoint Thurber, Whyland & Company, of New York, as trustee, to take possession of our property and canning factory, at Marshalltown, Iowa, sell and pack thereof, and apply the proceeds to paying themselves all advances they may make and the debt we now owe them of $16,251.54, and apply the surplus to the payment of the claims of our creditors.

Given under our hand, corporate seal, this 2nd day of August, A. D. 1884.

We hereby assent to the above.

MARSHALL CANNING CO.,
By H. C. YOUNG, *President.*
J. K. ARMSBY & CO.

45 We accept the within trusteeship Aug. 5, 1884.

THURBER, WHYLAND & CO.

In consideration of the foregoing agreement of Thurber, Whyland & Co., and the Marshall Canning Company, we hereby agree not [to] prosecute any claims we may hold against Marshall Canning Company until after January 1st, 1885.

—— ——.

We join in above, so far as relates to all notes or acceptances to which J. K. Armsby & Co. are a party.

FIRST NATIONAL B'K OF CHICAGO.
C. GAGE, *V. P.*
FIRST NATIONAL B'K OF MARSHALLTOWN.
GEO. GLICK.

46 STATE OF IOWA, } *ss:*
Marshall County, }

Upon reading the foregoing petition it is ordered that the writ of injunction therein prayed do issue upon the filing of a bond in the office of the clerk in the court named in said petition, conditioned

as required by law, in the penalty of $500, with sureties, to be approved by said clerk.

Dated this 20th day of October, 1884.

H. C. HENDERSON,
District Judge, 11th Jud'l Dist., Iowa.

(Endorsed:) A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Company *et al.* Petition in equity. Filed Oct. 18, 1884. S. R. M. Leane, clerk.

47 *Injunction Bond.*

Know all men by these presents, that we, A. W. Woodward and A. W. Langdon principals, and Geo. Glick sureties, are held and firmly bound unto The Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, and William J. Morrison in the penal sum of five hundred ($500) dollars, lawful money of the United States, well and truly to be paid to the said defendants, and to their heirs, executors and assigns. The condition of the above obligation is such, that whereas the said A. W. Woodward & A. W. Langdon, the 18th day of October, 1884, filed in the office of the clerk, district court of the State of Iowa, in and for Marshall county, a petition praying the issuance of an injunction to restrain
48 the sale &c., of the following described property: The canned goods now in the building or factory, or upon the premises of said Canning Company in Marshalltown, Marshall Co., Iowa, and said real and personal property, and from foreclosing a certain chattel mortgage of date July 28, 1884, and from selling or transferring said chattel mortgage and note of $16,252.00; and whereas on the 20th day of October, A. D. 1884, the Honorable H. C. Henderson, judge of the district court of the State of Iowa, in and for Marshall county, made an order on said petition- allowing said writ of injunction upon the giving of a bond by the plaintiffs in the penal sum of five hundred ($500) dollars: Now, therefore, if the said A. W. Wood-
49 ward and A. W. Langdon, shall and will pay all the damages which may be adjudged against him, by reason of such injunction, then this obligation to be void; otherwise, to remain in full force and virtue.

Dated this 20th day of October, A. D. 1884.

A. W. WOODWARD,
A. W. LANGDON,
Principals.
Per COSWELL & MEEKER,
Their Attorneys.
GEO. GLICK, *Sureties.*

Endorsed: No. —. Circuit court. A. W. Woodward and A. W. Langdon *vs.* Thurber Whyland & Co. *et al.* Injunction bond. The within bond and the sureties therein approved by me this 20th day of October, A. D. 1884.. S. R. McLearan, clerk. Filed October 20th, 1884. S. R. McLeran, clerk. Recorded.

50 *Notice to Show Cause Against Injunction.*

In the District Court of the State of Iowa in and for Marshall County.

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, WM. J. MORRISON.

To the Marshall Canning Company:

You are hereby notified that the above*d*-named plaintiff, on the 17 day of October, A. D. 1884, filed in the office of the clerk of the district court of the State of Iowa, in and for Marshall county, a petition claiming the cancellation of a $16,252.00 note, and the mortgage securing it, and asking that the defendant Canning Company and its officers be restrained from further mortgaging the
51 property of said corporation, the cancellation of a contract of trusteeship, and other equitable relief; and that said plaintiff has applied for a temporary injunction as prayed in said petition, and that at 8 o'clock a. m., October 20th, 1884, at the courthouse in Marshalltown, Iowa, H. C. Henderson, judge of said court will hear said application, at which time and place you may appear and resist said application, if you desire to do so.

(Signed) CASWELL & MEEKER,
Att'ys for Plaintiff.

STATE OF IOWA, }
Marshall County, } *ss:*

J. J. Meeker, on oath say-: I served the foregoing notice on the Marshall Canning Company on the 17th day of October, 1884, at Marshalltown in said county, by then and there giving a
52 true copy thereof to H. C. Young, president of said company. the reading being waived by said H. C. Young.

(Signed) J. T. MEEKER.

Subscribed & sworn to before me and in my presence by J. T. Meeker, 17th day of ——, 1884.

[s. s.] (Signed) VOLNEY KENT,
Notary Public.

Endorsed: A. W. Langdon & A. W. Woodward *vs.* Marshall Canning Company *et al.* Notice to show cause against granting writ of injunction.

53 *Original Notice.*

To Marshall Canning *Co.* Company, Thurber, Whyland & Co., & H. C. Young, A. T. Birchard, and William J. Morrison:

You are hereby notified that on or before the 1st day of November, A. D. 1884, there will be filed in the office of the clerk of the district court of Iowa, within and for the county of Marshall, the petition of A. W. Woodward and A. W. Langdon, in which said plaintiffs claim the cancellation of a certain note of $16,252.00, and the mortgages secur-

ing it, given by said Canning Co. to Thurber, Whyland & Co., the cancellation of a contract of trusteeship between the same parties, and also asking that said Thurber, Whyland & Co. be enjoined
54 from foreclosing said mortgage by notices and sale, and from selling or in any manner disposing of the canned goods and chattel property of said company; that said company and its officers be enjoined from further incumbering said property of the Canning Company; that a receiver be appointed to take charge of said goods; that after payment of just debts a dividend to stockholders be made, and for such other and further relief as may be just and equitable. Now, unless you appear and make defense thereto at or before noon of the second day of the next December term of said court, to be begun and held at Marshalltown, Iowa, on the 8th day of
55 December, A. D. 1884, your default will be entered and a judgment rendered hereon against you as prayed for in said petition.

Dated this 17th day of October, A. D. 1884.

A. W. WOODWARD AND
A. W. LANGDON, *Plaintiffs.*
COSWELL & MEEKER,
Attorneys.

56 STATE OF IOWA, }
Marshall County, } *ss:*

Received the within notice the — day of ——, 188–, and I hereby certify that I served the same on the persons named below by reading same to — and delivering to — a true copy of the same at the time and place set opposite.

Name of Persons.	Month.	Day.	Year.	Township.	County.	State.
H. C. Young	October.	22.	1884.	Marshall.	Marshall.	Iowa.
A. T. Birchard	"	"	"	"	"	"
W. J. Morrison	"	"	"	"	"	"
The Marshall Canning Company, by H. C. Young, pres't of said Company	"	"	"	"	"	"
Thurber, Wyland & Co., by W. A. Parchell, one of the firm.	"	"	"	"	"	"

GEO. B. McCORD,
Sheriff of Marshall Co., Iowa,
By H. D. EAST, *Deputy.*

Fees:

Service	$3 00
Copies	2 50
Mileage	50
Total	$5 00

57 (Endorsed:) District court Marshall county. A. W. Langdon and A. W. Woodward *vs.* Marshall Canning Company *et*

al. Original notice. This notice came to hand the 20th day of October, A. D. 1884. G. B. McCord, sheriff of Marshall county. Caswell & Meeker, attorneys for plaintiff.

58 STATE OF IOWA, } ss:
Marshall County, }

The State of Iowa to the Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, & William J. Morrison, defendant:

Whereas A. W. Woodward & A. W. Langdon, as plaintiffs, have this day filed in the office of the clerk of the district court of Marshall county aforesaid, a certain petition under oath, making the Marshall Canning Company, Thurber, Whyland and Company, H. C. Young, A. T. Birchard, & William J. Morrison, defendants therein; and whereas also the said petition has been duly presented to the honorable H. C. Henderson, judge of the district court of said county for the allowance of a writ of
59 injunction as prayed for in said petition; and whereas the said judge made an order allowing said writ of injunction to issue, restraining said defendant in manner and form hereinafter stated, upon the filing of a bond with sureties pursuant to said order; and whereas the said order has been complied with, and said bond filed and approved: Now, therefore, you, the said Thurber, Whyland and Company and William J. Morrison, defendants as aforesaid, in the name and by the authority of the State of Iowa, are hereby strictly enjoined and restrained from further shipping, handling, or in any manner or factory or upon the premises of
60 said Canning Company, situated in Marshalltown, Marshall Co., Iowa, and from seizing or selling said goods & chattles under *under* chattle mortgage of date July 28th, 1884, given you by said Canning Company or otherwise, & from foreclosing said chattel mortgage by notice and sail, & from selling, assigning, or transferring said chattel mortgage, and the $16,252.00 note which is therein described, and from taking or holding possession of the real or personal property of said Canning Company, or upon its premises under said contract of trusteeship or otherwise, & you, the said Marshall Canning Co., H. C. Young, & A. T. Birchard, are enjoined & restrained from further mortgaging and encumbering the real
61 or personal property of said Canning Co. until the further order of our said district court in the premises.

To the sheriff of Marshall county:

You are hereby commanded to make due service of this writ upon said defendants, and hereof fail not, and make return of this writ unto our said district court with your doings hereon endorsed on the first day of the next term of our said district court.

Witness S. R. McLeran, clerk of said district court of Marshall county, Iowa, and the seal of said court hereto affixed, this 20 day of October, 1884.

[s. s.] L. R. McLERAN,
Clerk as aforesaid.

62 STATE OF IOWA, *Marshall County,* } ss:

Received the within injunction the 20th day of October, 1884, and I hereby certify I served the same on the persons named below by reading the same to them and delivering to them a true copy of the same at the time and place set opposite their names.

Name of Persons.	Month.	Day.	Year.	Township.	County.	State.
H. C. Young	October.	22.	1884.	Marshall.	Marshall.	Iowa.
A. T. Birchard	"	"	"	"	"	"
W. J. Morrison	"	"	"	"	"	"
The Marshall Canning Co., by H. C. Young, pres. of said Co.	"	"	"	"	"	"
Thurber, Whyland & Co., by W. A. Parchell, one of said firm	"	"	"	"	"	"

GEO. B. McCORD,
Sheriff of Marshall Co., Ia.
By H. D. EAST, *Deputy.*

Fees:

Service	$3 00
Copies	2 50
Mileage	50
	$5 00

63 Endorsed: Writ of injunction. The State of Iowa to The Marshall Canning Company. Thurber, Whyland & Co. *et al.* $5 charges. Oct. 22, 1884.

64 *Notice of Application to have Injunction Bond increased to Twenty-Five Thousand Dollars.*

STATE OF IOWA, *Marshall County:*

In District Court. In Vacation.

A. W. WOODWARD and A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., WILLIAM J. MORRISON, *et al.*

To Caswell & Meeker, attornies for the plaintiffs in the above-entitled cause:

You are hereby notified that the defendants, Thurber, Whyland & Co. & William J. Morrison, will appear before Hon. H. C. Henderson, judge of the district of Marshall county, Iowa, at Webster City, Iowa, at eight o'clock in the forenoon, on the 28th day of October, 1884, and asks and pray said judge to increase the in-
65 junction bond in this case in the sum of twenty-five thousand dollars; the motion, affidavits, and attachess hereto will be

the basis of said application. You can appear and resist said applicate at said time and place if you see proper.

Oct. 23, 1884. BINFORD & SNALLING,
Att. for said Def'ts.

We hereto accept service of the with- notice and affidavits attached.

Oct. 23, 1884. CASWELL & MEEKER,
Att'y- for Plaintiffs.

OCT. 24, 1884.

It is agreed that this application may be presented to the Hon- H. C. Henderson, judge, at the office of Binford & Snelling, Marshaltown, Ia., a- 8 o'clock p. m., Oct. 25, 1884, in case said judge can be there; if not, it may be presented to him at Webster
66 City at 8 o'clock a. m. Oct. 27, 1884, and in either case plaintiff waives no rights to object to said application being then he-rd or from asking a continuance at said time that they would have if the application was presented at the time and place named in the notice.

BINFORD & SNELLING,
Att'y- for Applicant.
CASWELL & MEEKER,
Att'ys for Pl'ff.

67 *Motion to Require Plaintiff to Give Additional Injunction Bond.*

STATE OF IOWA, } *ss:*
Marshall County, }

In Dist. Court. In Vacation.

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., WILLIAM J. MORRISON, *et al.*

Comes now defendants, Therber, Whyland & Co. and William J. Morrison, *defendants*, and moves that plaintiff be required to give additional injunction bond herein in the sum of twenty-five thousand dollars, and for cause thereof shows the court the matters & things alleged in the petition and the affidavits of William
68 J. Morrison and W. A. Parshall, hereto attached and made a part thereof.

BINFORD & SNELLING.
Att'y- for Def't.

69 STATE OF IOWA, } *ss:*
Marshall County, }

I, W. A. Parshall, being duly sworn, on my oath say, I am a member of the firm of Therber, Whyland & Co.; that the Canning Company, defendant herein, now owes us, Therber, Whyland & Co.,

about twenty thousand dollars; that the canned goods mentioned in the petition, which we have been enjoined from selling, are perishable goods; that they are liable to be greatly damaged or entirely lost, if not properly cared for, and especially if exposed to frost; that said goods are now selling at a fair price; that we have worked up a good trade; that the expectations is that said
70 goods will depreciate in the market; that we now have regular customers for these goods, which we will lose, if we are now cut off from supplying the trade; that if the canned goods are lost to us we will be without remedy, and must lose our entire claim against the Canning Company.

It is highly probable that if this injunction is permitted to stand that we, Thurber, Whyland & Co., will lose our entire claim; that the damages on the orders now in, if we are prevented from filling, will exceed the amount of the present bond.

W. A. PARSHALL.

71 Subscribed and sworn to before me and in my presence by W. A. Parshall, this 23rd day of October, 1884, as witness my hand and seal notorial.

[s. s.]

T. BINFORD,
Notary Public, Marshall Co., Iowa.

72 STATE OF IOWA, *Marshall County:*

I Will. J. Morrison, being duly sworn, on my oath say I am agent, or in the employ of Thurber, Whyland & Co., in looking after their interest in the Canning Company deal at Marshalltown, Iowa, and that for them I hold possession for the trustee of the property described in plaintiffs' petition.

I further say said goods are liable to be greatly damaged or entirely lost, if not proper- cared for.

That by agreement with said trustee and the Canning Company and def't-, Young & Birchard, J. K. Armsby & Co., or J. K. Armsby, was to sell said goods, the pack of this season.

73 That I have learned and believe said Armsby is now out on the road placing orders for said goods, and that he is now in St. Paul or Minneapolis, and I do not know what orders he has taken that have not been received by us.

Part of said goods we sold to Sprague, Warner & Co., of Chicago, and the same have been billed to said firm, but not yet delivered, goods amounting to about eight thousand seven hundred and ninety-five dollars; that by the terms of said sales these goods are now held by us, subject to the order of Sprague, Warner & Co., and to be shipped by us on the order of said firm to such place
74 and at such time as they direct. That said sale originally amounted to about $10,000.00 dollars; a part of said goods have already been shipped; that we have sold and billed to Bowler & Taylor, of Marshalltown, Iowa, of the goods now on hand, to the amount of $158.50, and we have sold of goods now on hand, besides the sales above named, goods amounting in the aggregate to the sum of $4,850.00.

That if we are prevented from filling said orders we may sustain great damage.

WM. J. MORRISON.

Subscribed and sworn to before me and in my presence by the said William J. Morrison, this 23rd day of October, 1884, as witness my hand and seal notorial.

T. BINFORD,
Notary Public, Marshall Co., Iowa.

75 Endorsed: District court, Marshall county. A. W. Woodward and A. W. Langdon *vs.* The Marshall Canning Company *et al.* Notice, motion, and affidavit for increased injunction bond. Filed Oct. 24, 1884. L. R. McLeane, clerk.

76 STATE OF IOWA, }
Marshall County, } *ss:*

I, H. C. Young and A. T. Birchard, on oath say, each for himself, that I am a stockholder and officer of the Marshall Canning Company, of Marshalltown, Iowa; that I know the financial standing of said company, and the amount and value of the assets of [said] company.

That the actual amount of money and merchandise advanced by Thurber, Whyland & Co. to said Canning Company, up to the date hereof, to be used, and which has been used in putting up the pack of said company for the season of 1884, is $43,395.45, and the actual amount in goods by said Canning Company delivered to said
77 Thurber, Whyland & Co. is the sum of $39,002.15, leaving a balance still due said Thurber, Whyland & Co., for the money thus advanced, $4,393.28, and that is all indebtedness of said Canning Company, except it may be a small sum for interest and commission.

The $16,252.00 note mentioned in the petition being absolutely void, is no indebtedness from said Canning Company to Thurber, Whyland & Co. These affiants deny that the canned goods now in the factory of said Canning Company are perishable in their nature, but own that said goods will keep for years in a warehouse or store without material loss or damage. That the goods
78 put up by said company are in good condition and perfectly excluded from the air, and are now stored in a double-walled brick building and warehouse on the grounds of said Canning Company where they are fully protected from the weather.

79 These affiants expressly deny that said firm of Thurber, Whyland & Co. are selling said goods at fair prices, but own that said goods are being sold at low prices, and at actual loss to said Canning Company.

The actual cost of manufacturing three pound-cans of tomatoes per dozen to said company during the packing season of 1884 is 90 cents, and the same are now being [sold] by said Thurber, Whyland & Co. at such rates that said Canning Company realizes per dozen

cans the sum of 81 cents, being an actual loss of 9 cents per dozen.

80 That 2-lb corn was manufactured during said season at a cost of 80 cents per dozen, and are being sold at such rates that the Canning Company realize 85 cents per dozen.

The above prices are taken from actual figures, as shown by the books of said company, after a careful and correct examination thereof. These affiants say that said goods, with the exception of a few small customers, have been sold to the regular customers of said Canning Company, and that as there is a limited supply of canned goods in the country, instead of depreciating in value, these

81 affiants say that said goods, with the exception of a few small customers, have been sold to the regular customers of said Canning Company, and that as there is a limited supply of canned goods in the country, instead of depreciating in value, these affiants say, in their opinion, *say* goods will be worth more in 90 days from the date than they are now bringing in the market. These affiants say so far as the goods now billed to Sprague, Warner & Co. are concerned, and the bill of $158.00 to Bowler & Taylor, as the Canning Company has received a credit for these goods thus billed, the at-

82 torneys of A. W. Langdon and A. W. Woodward, Caswell and Meeker, of Marshalltown, Iowa, have consented and directed that said goods should be shipped as per terms of sales in the same manner as other shipments have been made. These affiants further say that within the last two days they have learned from one of the affiants in support of the motion of defendant to increase the amount of the bond in this case. That J. K. Armsby is now in Chicago sick, and has been for three week- last past, and h- is not on the road taking orders for goods in the interest of said Thurber, Whyland & Co., and there will be no loss in that particular.

83 These affiants say the said Marshall Canning Company is in possession of said canned goods, and can and will ship all orders on the books of said company, and out of the proceeds thereof will pay any balance due said Thurber, Whyland & Co. for money advanced as aforesaid, or pass the goods to the credit of said Thurber, Whyland & Co.; that on this 25th day of October, A. D. 1884, said Canning Company have shipped of the Sprague, Warner & Company goods twelve hundred cases, amounting to about $2,400.00.

H. C. YOUNG.
A. T. BIRCHARD.

84 Subscribed and sworn to before me and in my presence by H. C. Young and A. T. Birchard, this 25th day of October, 1884.

[s. s.] J F. MEEKER,
Notary Public, Marshall Co., Iowa.

Endorsed: Langdon and Woodward *vs.* Thurber, Whyland & Co. *et al.* Affidavits in resistance of motion for increase of bond. Filed Oct. 27, 1884. L. R. McLeran, clerk.

85 MARSHALLTOWN, IOWA, *Oct.* 25, 1884.

A. W. WOODWARD & A. W. LANGDON

vs.

THURBER, WHYLAND & CO. and MARSHALL CANNING COMPANY *et al.*

In the matter of the application of defendants, Thurber, Whyland, & Co., for additional security on injunction bond.

Come now the parties plaintiff, by Caswell & Meeker, and the defendants, T., W. & Co., by Binford & Snelling, and submit motion for additional security and affidavits supporting and resisting the same, and after argument of counsel and due consideration of the fact submitted I hereby order that the determination of the application for additional security be postponed until Monday, November 3d, A. D. 1884, at 9 o'clock a. m., at the court-house in
86 Marshalltown, Iowa, and it further appearing to me that right and interest of the parties litigant cannot be protected and subserved without the appointment of a receiver as prayed for in plaintiffs' petition, it is therefore ordered that at the time and place last above mentioned the matter of the appointment of a receiver shall be heard and determined. It is further ordered that until the appointment of a receiver the goods in controversy shall remain in store on the premises of the defendant, The Marshall Canning Company, without the molestation of any of the parties litigant unless otherwise directed by the plaintiff or their at-
87 torneys, and the defendants, Thurber, Whyland & Co., or their attorneys in writing, except that the orders mentioned in the affidavit of Sprague, Warner & Co., and Bowler & Taylor, shall be filled according to contract as shown by the books of the Canning Company. The goods on said order to be delivered or shipped under the supervision of a person to be designated immediately by the plaintiff or their attorneys on the one side, and the defendants Therbur Whyland & Co. or their attorneys on the other side; and if they cannot agree upon a suitable person, then each party shall select one person under who- joint supervision said order shall
88 be filled; to all of which Thurber, Whyland & Co. at the time excepted.

H. C. HENDERSON, *Judge.*

MONDAY MORNING *October 27th*, 1884.

It is hereby ordered that George Glick be, and he is hereby, appointed a temporary receiver to take charge of the property in controversy temporarily, until the matter of the appointment of a receiver be heard & determined. He shall supervise the billing of the orders provided for in the foregoing order and act under said order in lieu of the person or persons provided for in said order. He shall execute a bond in a penalty of $10,000.00.

H. C. HENDERSON, *Judge.*

89 (Endorsed:) A. W. Langdon *et al. vs.* Thurber, Whyland & Co., *et al.* Order of H. C. Henderson. Filed October 27, 1884. L. A. McLeran, clerk.

90 Know all men by these presents, that Geo. Glick, principal, and sureties are held and firmly bound unto A. W. Langdon, A. W. Woodward, The Marshall Canning Company, Thurber, Whyland & Company, H. C. Young, A. T. Birchard, and William J. Morrison in the penal sum of ten thousand dollars, lawful money of the United States, well and truly to be paid to them, and each of them, and their heirs, executors, and assigns.

The condition of this obligation is such, that whereas the said George Glick was, on the 27 day of October, 1884, appointed by Hon. H. C. Henderson, judge of the district court of the State of Iowa in and for Marshall county, Iowa, a temporary receiver in an action
91 pending in said court, wherein A. W. Langdon and A. W. Woodward are plaintiffs, and The Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, and William J. Morrison are defendants: Now, if the said receiver shall and will well and faithfully discharge his duties as such receiver, and obey the orders of the court in respect thereto, then this obligation to be void; otherwise, to remain in full force and virtue.

Dated October 27, 1884.

GEO. GLICK, *Principal.*
GEO. T. KIRBY,
Sureties.

I, Geo. Glick, named in the foregoing bond as receiver, do solemnly swear that I will faithfully discharge my trust as such receiver to the best of my ability. So help me God.

GEO. GLICK.

92 Subscribed & sworn to before me and in my presence by Geo. Glick, this 27 day of October, A. D. 1884.

[s. s.] S. R. McLERAN,
Clerk of Dist. & Circuit C'ts.

Endorsed: A. W. Langdon, A. W. Woodward *vs.* Therbur, Whyland & Co., *et al.* Bond and oath of receivers. Filed and approved Oct. 27, 1884. S. R. McLeran, clerk. Recorded.

93 *Motion for Continuance.*

A. W. Woodward, A. W. Langdon
vs.
The Marshall Canning Co. *et al.*

Comes now Thurber, Whyland & Co. and Wm. J. Morrison, and asks the court to continue the application of pl'ff- to appoint a receiver verbally made for twenty days from this date for the following reasons:

1st. The notice of the application was served only a few days ago, and no sufficient time has elapsed in which defendants could prepare a defence.

2nd. Because these defendants are taken by surprise, in that *that*

the judge, Hon. H. C. Henderson, holds that he still has jurisdiction of this court.

3rd. Because Thurber, Whyland & Co. lives in New York
94 State, and each and all [of] them are now absent from the State of Iowa; that before the hearing of this application defendants desires to file answer to the petition in this cause, by which it will appear that the allegations of the petitioners are not true; that the claim of Thurber, Whyland & Co. against Marshall Canning *Canning* Company, if in the said note of $16,252.00 dollars is a just, true, and subsisting liability, and all the agreements, contracts, notes, and mortgages set out in plaintiffs' petition are genuine, just, and valid, & binding on the Canning Company, and consequently the plaintiffs hereof.

That said answer will be under oath & truthfully doing every material obligation of the petition.

Defendants desires to produce affidavits denying the alle-
95 gation of the petition of W. A. Parshall, who is now absent in the State of New York; also def'ts desires a correct copy of the account of money advanced and goods sold, which can only be obtained from the books of the company at New York city, and cannot proceed to the hearing of this motion without said affidavits and further consultation with def'ts.

BINFORD AND SNELLING,
Att'y for Def'ts Named Herein.

96 COURT-HOUSE, MARSHALLTOWN, IOWA, *November 3d*, 1884.

The matter of the additional security in the cause entitled at the head of the foregoing motion, and of the appointment of a receiver in said cause coming on for hearing pursuant to order, have therefor- made, & notices, &c., and the defendant, Thurber, Whyland & Co., having filed the foregoing motion for a continuance of said matters and the same being heard, it is ordered that the further hearing be had of said matters on Saturday November 22, '84, at 7 o'clock p. m., at this place, and temporary receiver continued under said former order until date of hearing or further order in regard to the same.

H. C. HENDERSON, *Judge.*

97 Endorsed: A. W. Woodward, A. W. Langdon *vs.* Thurber, Whyland & Co., *et al.* Motion for a continuance for the application of receiver.

98 In Marshall Co. Dist. Court.

A. W. LANGDON, A. W. WOODWARD,
vs.
THURBER, WHYLAND & CO., THE MARSHALL CANNING CO., H. C. YOUNG, A. T. BIRCHARD, WM. J. MORRISON. } In vacation.

To the above-named defendants, Thurber, Whyland & Co., or to Binford & Snelling, their attorneys, and to Wm. J. Morrison:

You are hereby notified that the plaintiff in the above case will,

on the 3rd day of November, 1884, at the court-house in Marshalltown, Iowa, at 9 o'clock a. m. of said day, apply to the honorable H. C. Henderson, judge of the 11 judicial district of Iowa, for the
99 appointment of a permanent receiver in the above case as prayed for in the petition of plaintiffs in said case, and now on file in the office of the clerk of the district court in and for Marshall county, Iowa, and by reason of facts as shown in said petition and the affidavits of defendants filed in support of their application for an increase of the injunction bond in said case.

CASWELL & MEEKER,
Att'ys for Plaintiffs.

STATE OF IOWA, }
Marshall Co., } *ss:*

Received and served this notice the 29th day of October, 1884, upon Binford and Snelling by reading the same to W. E. Snelling, one of said named firm, and at same time and place he waived
100 a copy of the same; all done in Marshall township, Marshall county, Iowa.

GEO. B. McCORD, *Sheriff.*
By H. D. EAST, *Deputy.*

Fee, 85 c.

Endorsed: D. C. A. W. Langdon, A. W. Woodward, *vs.* Thurber, Whyland & Co. *et al.* Notice of application for appointment of receiver. C. & M.

101 A. W. LANGDON, A. W. WOODWARD } In Vacation.
vs.
THURBER, WHYLAND & CO. *et al.* }

Comes now defendants, Thurber, Whyland & Co. and Wm. J. Morrison, and file this their objections to the appointments of a receiver in this case for the following reasons:

1st. Defendants making this objection have made, and there is now filed in this cause a proper petition and bond for the removal of this cause to the United States circuit court for the southern district of Iowa, central division.

2nd. No showing is made that will or would authorize the appointment of a receiver in this case.

3rd. Plaintiffs, in no event, are entitled to a receiver, as they show by their petition that they have no intent in the personal property.

102 4th. No one is asking the court to appoint a receiver.

5th. The defendants, Thurber, Whyland & Co., have no offer to give bond in the full value of all the personal property described in the petition, to wit, forty thousand dollars, to abide the order of this or any other court that has jurisdiction of this case, if said property is released to them as trustee.

6th. Because plaintiff is not entitled to the relief demanded, is entitled to no relief whatever.

7th. Because def't, Thurber, Whyland & Co., against whom the

application is made, is solvent and able to respond in damages for any loss the plaintiff will sustain by reason hereof.

8th. No receiver can be appointed for a trustee in a collateral proceeding, where the party making the complaint has no
103 interest in the property in the hands of the trustee.

9th. Because the plaintiff has an adequate — at law.

10th. Because it is shown on the face of the petition that in no event could the appointment of receiver be of any benefit to the plaintiffs.

11th. Because this court has no jurisdiction of this cause.

BINFORD & SNELLING,
Atty's for Def'ts hereinbefore named.

Endorsed: A. W. Woodward, A. W. Langdon, *vs.* Thurber, Whyland & Co. *et al.* Objections to the appointment of a receiver.

104 *Petition of Defendants, Thurber, Whyland & Co., and William J. Morrison for Removal to the Circuit Court of the United States for the Southern District of Iowa, Central Division.*

STATE OF IOWA, *Marshall County.*

In District Court for said County.

A. W. WOODWARD, A. W. LANGDON,
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND AND COMPANY, WILLIAM J. MORRISON, H. C. YOUNG, and A. W. BIRCHARD.

To said district court:

Your petitioners, the above-named defendants, Thurber, Whyland & Co., and William J. Morrison, respectfully show to the honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit
105 between citizens of different States, and that your petitioners, and each of them, were, at the commencement of this suit, and still are, non-residents of the State of Iowa. That the above-named petitioner, Thurber, Whyland & Co., was, at the time of the commencement of this suit, and still is, a citizen of the State of New York. That said Thurber, Whyland & Co. is a copartnership whose principal place of business, at the time of the commencement of this suit, was, and still is, in the State of New York. That said firm is composed of H. K. Thurber, (a special partner,) Francis B. Thurber, Albert E. Whyland, Jacob S. Gates, William A. Parshall, Henry B. Kirkland, who were each a member of said firm at the time of the commencement of said suit, and is still a member of said
106 firm. That each of the above-named members of said firm was, at the time of the commencement of said suit, and still is, a citizen of the State of New York, and Alexis Godillot, Jr., who was a member of said firm at the time of the commencement of said

suit, and still is such member, and that said Alexis Godillot, Jr., was, at the commencement of said suit, and still is, a citizen of the State of Connecticut.

That your petitioner, William J. Morrison, was, at time of the commencement of this suit, and still is, a citizen of the State of New Jersey. That plaintiff, A. W. Langdon, was, at the commencement of this suit, and still is, a citizen of the State of New York. That the other plaintiff, A. W. Woodward, was, at the commencement of this suit, and still is, a citizen of the State of Illinois. That the de-

107 fendant in this action, The Marshall Canning Company, H. C. Young, and A. T. Birchard, and each of them, was, at the commencement of this —, and still is, a citizen of the State of Iowa.

Your petitioners state that in said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, "a controversy between the defendant, The Marshall Canning Company, and your petitioners, Thurber, Whyland & Co., which is in fact the only real controversy in this suit, which controversy is to determine the validity of the mortgages set out in the plaintiff-' petition and the note of $16,252.00 secured by said mortgages, and to determine the

108 validity of the agreement between your petitioners and Marshall Canning Company," by which Thurber, Whyland & Co. were appointed and constituted trustee of said property, as set out in plaintiffs' petition; and also to determine if the contract set out in petition, in which the $16,252.00 note was given, is usurious or not; that the Marshall Canning Company, defendant, was, at the commencement of this suit, and still is, the real party in interest, the plaintiffs in said suit and defendants, H. C. Young and A. T. Birchard, being only nominal parties thereto, having no interest whatever in the controversies between said Marshall Canning Company and your petitioners, Thurber, Whyland & Co.; and your petitioners offers herewith a bond, with good and sufficient surity, for their

109 entering in said circuit court of the United States for the southern district of Iowa, central division, on the first day of its next session, a copy of all the records in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And they pray this honorable court to proceed no further herein, except to make the order of removal required by law, and to cause the record herein to be removed unto said circuit court of the United States in and for the southern district of Iowa, central division, as they will pray.

BINFORD & SNELLING,
Att'ys for Defendant.
THURBER, WHYLAND & CO. AND
WILLIAM J. MORRISON.

110 STATE OF IOWA, } ss:
Marshall County, }

I, W. A. Parshall, being duly sworn, on my oath say I am a member of the firm of Thurber, Whyland & Co., one of the petitioners herein; that I have heard read the matters and things stated in the foregoing petition for the removal of said cause to the United States court; that the matters and things stated in said petition are true, as I verily believe.

W. A. PARSHALL.

Subscribed and sworn to before me and in my presence by the above-named W. A. Parshall, this 28th day of October, A. D. 1884, as witness my hand and seal notarial.

[L. S.]

T. BINFORD,
Notary Public Marshall County, Iowa.

111 Endorsed: District court Marshall county. A. W. Woodward, A. W. Langdon, *vs.* The Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, William J. Morrison. Petition by Thurber, Whyland & Co. & William J. Morrison for removal to circuit court of the United States. Binford & Snelling, att'y for petitioners.

112 In District Court, Marshall County, State of Iowa.

A. W. LANGDON, A. W. WOODWARD
vs.
THE MARSHALL CANNING CO. *et al.*

To H. C. Henderson, judge:

Defendants, Thurber, Whyland & Co. and Wm. J. Morrison, request that you make an order of removal of the above-entitled cause in accordance with the prayer of said petition for removal, and that you proceed no further with the firm hereof.

BINFORD & SNELLING,
Att'ys for Def'ts.
THURBER, WHYLAND & CO.
WM. J. MORRISON.

113 Know all men by these presents, that we, Thurber, Whyland & Co. and William J. Morrison, as principals, and Geo. Glick, a surety, are held and firmly bound unto A. W. Woodward, A. W. Langdon and H. C. Young, and A. T. Birchard and the Marshall Canning Company in the penal sum of five hundred dollars, the payment whereof, well and truly to be made unto said A. W. Woodward, A. W. Langdon, and the Marshall Canning Company, its heirs, assigns, and successors, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents. Yet upon these conditions: The said Thurber, Whyland & Co. and William J. Morrison, having petitioned the district court of Marshall

county, State of Iowa, for the removal of a certain cause therein
114 pending, wherein A. W. Langdon and A. W. Woodward are plaintiffs and Thurber, Whyland & Company, William J. Morrison, The Marshall Canning Company, H. C. Young, and A. T. Birchard are defendants, to the circuit court of the United States in and for the southern district of Iowa, central division: Now, if the said Thurber, Whyland & Co. and William J. Morrison, your petitioners, shall enter into said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise, in full force and virtue.

115 Witness our hands and seals, this 28th day of October, A. D. 1884.

THURBER, WHYLAND & CO.
WM. J. MORRISON.
GEO. GLICK.

STATE OF IOWA, }
Marshall County, } *ss:*

I, George Glick, being duly sworn, on my oath say that I am the surity on the foregoing bond. That I am a resident of the State of Iowa. That I am worth five thousand dollars beyond the amount of my debts, and that I have property liable to execution in the State of Iowa in the sum of five thousand dollars.

[L. S.] GEO. GLICK.

Subscribed and sworn to before me and in my presence by the above named Geo. Glick, this 28 day of October, A. D. 1884, as witness my hand and seal notarial.

T. BINFORD,
Notary Public Marshall Co., Iowa.

116 The within petition being by me deemed insufficient, in that it does not show that the plaintiffs have the right of removal, because one of the plaintiffs who are necessary parties to the suit, and without whom, upon the pleadings as they stand, the material matters in controversy cannot be determined, therefore the petition is denied, and the removal refused, and petitioners except this 3rd day of November, A. D. 1884.

H. C. HENDERSON, *Judge.*

Endorsed: State of Iowa, Marshall county. District court. A. W. Woodward, A. W. Langdon, *vs.* The Marshall Canning Company, Thurber, Whyland & Co., William J. Morrison, H. C. Young & A. T. Birchard. Petition of Thurber, Whyland & Co. and Will-
117 iam J. Morrison, and bond of removal to the circuit court of the United States. Filed and approved October 28, 1884. S. R. McLeran, clerk. Binford & Snelling, att'y- for petitioners.

118 In the District Court of the State of Iowa in and for Marshall County. In Vacation.

A. W. WOODWARD & A. W. LANGDON

vs.

THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., WM. J. MORRISON, *et al.*

Comes now the plaintiff-, and object to and resist the removal of the above-entitled case to the United States circuit court, as prayed for in the petition of Thurber, Whyland & Co. and Wm. J. Morrison, two of them defendants therein, and object to the granting of the prayer of said petition for removal, filed in the clerk's office of the district court of Marshall county, Iowa, upon the grounds following, to wit:

119 1st. Only two of the five defendants in said suit join in said application for said removal, and said matter as to them cannot be determined and adjusted without the presence of the other defendants, who are material and necessary defendants.

2d. The controversy in said suit is not between citizens of different States, and is so shown by said petition, to wit: The only defendant in interest applying for said removals, Thurber, Whyland & Co., is a citizen of the State of New York, and the principal plaintiff in interest as shown by the pleadings and in fact, A. W. Langdon, is also a citizen of New York.

3d. The real controversy is not between the Marshall Can-
120 ning Company and Thurber, Whyland & Co., but is a controversy between two shareholders of said Canning Company, who have large moneyed interest and rights involved. The one of largest interest and principal plaintiff being a citizen of New York, and the Marshall Canning Company and Thurber, Whyland & Co., who together have invaded & jeopardized the rights of said stockholders, and which they ask to have restored to *to* them.

4th. Because the substantial controversy is between citizens of different States and the Federal court has no jurisdiction.

5th. Because of the points set fourth in the plaintiffs' petition in the above case.

6th. Because the plaintiffs are not citizens of the State of Iowa.

CASWELL & MEEKER,
Att'ys for Pl'ff-.

121 Endorsed: A. W. Woodward and A. W. Langdon *vs.* The Marshall Canning Company, Thurber, Whyland & Company, *et al.* Objection to removal to U. S. circuit court. Filed Nov. 3, 1884. S. R. McLeran, clerk. C. & M.

122 *Cross-Petition of Defendant, Thurber, Whyland & Co., against Defendant, The Marshall Canning Company.*

STATE OF IOWA, *Marshall County:*

In District Court.

A. W. WOODWARD, A. W. LANGDON

vs.

THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, WM. J. MORRISON.

Comes now defendants, Thurber, Whyland & Company, and for cross action, as set out in this cross-petition against the defendant, The Marshall Canning Company, says:

Par. 1. Your cross-petition- shows to the court that the defendant, The Marshall Canning Company, is a corporation duly incorporated under the general laws of the State of Iowa for pecuniary
123 profit, whose principal and only place of business is in the city of Marshalltown, Marshall county, State of Iowa.

Par. 2. That your petitioners *is* a copartnership, engaged in business in the city and State of New York.

Par. 3. That on or about the 28th day of July, A. D. 1884, your cross-petitioner held and was the owner of about six thousand dollars in amount of bills of exchange or drafts drawn by one J. K. Armsby & Co. against the defendant, The Marshall Canning Company, and accepted by them, which drafts were not then matured; but, hearing that said defendant Canning Company was greatly
124 embarrassed, if not insolvent, your petitioners came to Iowa to def't Canning Company to obtain additional security therefor.

Par. 4. That on said 28 day of July, A. D. 1884, at the time your petition- applied to said Canning Co. for said additional security, the said Canning Company was insolvent; that in the earlier part of the summer, to wit, April, 1884, the said Canning Company, in order to enable them to pack or case the goods contracted for during the season of 1884, executed to J. K. Armsby & Co. mortgages, both chattel & real estate, in the sum of twenty thousand dollars, on the property owned by the Canning Company, including all the property covered or included in the mortgages hereto attached,
125 marked Exhibits "A" & "B," which mortgages secured two notes of ten thousand dollars each, to be held by said Armsby & Co. as collateral security for any money or short-time loans made by said Armsby & Co. to said Canning Company.

That in compliance with said agreement, and notes and mortgages, in order to make short-time loans to said Canning Company, said Armsby & Co. drew drafts on said Canning Company, payable to said Armsby & Co., and by said Armsby & Co. endorsed and discounted, and the proceeds thereof turned over to said Canning Company.

That at that date, July 28th, 1884, drafts, in manner and
126 like those above named, had been drawn and accepted to the amount of thirty-five or forty thousand dollars, of which

you petition- held about six thousand dollars; yet, and notwithstanding the above, the said Canning Company had no money and no security for obtaining the same with which to put up the pack of the season of 1884, and were then in debt for labor and material past due, and were being pressed for the payment of the same.

Par. 4. That at that date, July 28, 1884, your petition- held, and was the owner of, an account and notes against J. K. Armsby & Co. in the sum of over ten thousand dollars, which
127 was known to defendant Canning Company. Whereupon the said Canning Company verbally proposed to your petitioners that their crop was ready to pack; that they had contracts out with various farmers for corn, tomatoes, and other vegetables, and the corn was about ready for delivery, and in their present condition they would be unable to comply with said contracts and receive said corn and other vegetables from the farmers unless they could get help from some one, and proposed that if your petitioner would come to the front and advance them money enough to put
128 up the pack of 1884, and pay for such goods, machinery, and other things that they were compelled to have, and obtain an assignment of the twenty thousand dollars—Armsby & Co. mortgages—hereinbefore mentioned, and cancel the same, and obtain the cancellation of the two ten thousand dollar notes secured thereby, and obtain an agreement from the parties holding the Armsby & Co. drafts aforesaid, to postpone their claims to that of your petitioners and not trouble the Canning Company until after January 1st, 1885, by insisting upon payment or commencing action thereon, and if you, petitioner, would take
129 charge of the business of the Canning Company during the season of 1884, and can and sell said goods, and collect the proceeds thereof in the capacity of trustee for themselves and the other creditors, and pay themselves first, and pay the remainder to the creditors of said Canning Company, and obtain the consent of the creditors of said Canning [Company] to your petitioners acting as trustee as aforesaid, then and in that event the said Canning Company would buy of your petitioners their account and demand against J. K. Armsby & Co., and take an assignment thereof and collect the same itself, and would also take up from your
130 petitioner the six thousand and odd dollars or drafts which your petitioner held against said Canning Company, and execute to your petitioners the note of sixteen thousand two hundred and fifty-one & $\frac{59}{100}$ dollars therefor, and also execute to your petitioners another of twenty-five thousand dollars, and secure each and both of said notes by both a real estate and chattel mortgage, and your petitioners verbally accepted of said proposition, and complied with their part of said agreement.

Par. 5. That in compliance with said contract and agreement as set forth in the 4th paragraph of this petition, the said Canning Company executed to your petitioners their promissory
131 notes hereto attached by copy marked C & D, and made a part hereof, the one marked C being in the sum of sixteen

thousand two hundred and fifty-one and $\frac{59}{100}$ dollars, and the one marked D being for the sum of twenty-five thousand dollars.

Par. 6. That on said date, July 28th, 1884, the said Canning Company, in compliance with said agreement named in the 4th paragraph of this petition, in order to secure the same and prompt payment of said notes, executed to your petitioners one real estate mort-
gage on the Canning Company's real estate in Marshall county
132 and State of Iowa, more particularly described in said mort-
gage hereto attached, marked Exhibit A, and made a part hereof; which mortgage was duly filed for record on the 5th day of August, 1884, at 2.45 o'clock p. m., and duly recorded in book No. 128, page 341, of mortgages, Marshall county, State of Iowa. The chattel mortgages executed to secure said notes is upon certain personal property more particularly described—the said chattel mortgage which is hereto attached, marked Exhibit "B," and made a part hereof; which chattel mortgage was filed for record on the 5th day of August, 1884, at 2.45 o'clock p. m., and duly recorded in book No. 134, page 328, of chattel mortgage records of Marshall county and State of Iowa.

133 Par. 7. Your petitioner shows to the court that in compliance with the agreement and contract, as set forth in paragraph four of this petition, your petitioners obtained the consent of the creditors of said Canning Company to your petitioners acting as trustee as aforesaid, and also the agreement from said creditors not to prosecute their claims against the Canning Company until after January 1st, 1885, which agreement is in writing attached hereto, marked Exhibit E, and made a part hereof.

Par. 8. That in compliance with said agreement with the Canning Company, as set forth in this petition, your petitioners
134 obtained an assignment of said twenty thousand dollars
mortgage to Armsby & Co., and notes secured thereby, and cancelled said mortgage of record, and surrendered to said Canning Company the notes secured thereby; also at once took possession of the property, both real estate and personal property, and completed the pack of the season of 1884, and thereby paid out and advanced for Canning Company money a- various times to divers persons in various amounts between the 8th day of August, 1884, and the first day November, 1884, inclusive, money amounting in the aggregate, including interest at 8 per cent. per annum, to the sum of forty-eight thousand four hundred eighty
135 eight & $\frac{48}{100}$ dollars, all of which was necessary and required
to be paid out in order to complete the pack of said Canning Company for the season of 1884, as provided by said agreement; and that, in compliance with said contract, your petitioner has sold of said pack goods, for which they have received pay, sold to divers persons, and amounting in the aggregate, for which the said Canning Company have and should have credit, to the sum of twenty-one thousand three hundred and thirty-three and $\frac{18}{100}$ dollars, leaving a balance due your petitioners on account of the money advanced the sum [of] twenty-eight thousand one hundred and fifty-
136 five and $\frac{30}{100}$ dollars, which includes two thousand dollars'
worth of goods returned by Johnson, Steel & Co., for which

the Canning [Company] have received credit as cash; that, in addition to the above your petitioners has sold other goods from said pack to various persons, some of which have been delivered, and some still in the warehouse of the Canning Company, amounting in the aggregate to the sum of fifteen thousand five hundred and sixty-four and $\frac{30}{100}$ dollars; all of which will more fully appear by an itemized statement of said account hereto attached, marked Exhibit "F," and made a part hereof.

137 Par. 9. Your petitioner shows to the court that each of said notes and mortgages provides for the reasonable attorney fee for plaintiffs' attorney, in case of the foreclosure of said mortgage or the collection thereof by said —; and your petitioners shows to the court that action is hereby commenced to foreclose said mortgages and collect the amount due thereon by suit, and such reasonable sum is at least five hundred dollars, which your petitioners asks may be allowed and declared a special lien on the mortgaged property, as provided in said mortgages.

138 Par. 12. Your petitioner further shows to the court that by the terms of said notes hereinbefore set out on their face they do not mature until January 28th, 1885, but that by the terms of said notes and mortgages and other written agreements herein set out as part of the same transaction said notes matured and were to be paid as fast as your petitioners (trustee) could sell goods and pay the same, whereof and by reason of which your petitioners avers both of said notes are now past due. That both of said notes are the property of your cross-petitioner; that there is due on

139 the $16,251.59 dollars note the sum of sixteen thousand two hundred fifty-one & $\frac{59}{100}$ dollars, with eight per cent. interest from July 28, 1884, and that there is due on the twenty-five thousand dollar note hereinbefore set out the sum twelve thousand five hundred and ninety-one dollars, after giving said Canning Company credit for all goods sold whether paid for [or] not, with eight per cent. interest from November 1st, 1884, the property described in said mortgages, and from selling or disposing of said property in any manner whatever and enjoying your petitioner from further acting as trustee, which injunction is still in force,

140 and your petitioners further alleges that said Woodward & Langdon conspired with said Canning Company aforesaid to av-id the jurisdiction of the United States court, and for that purpose the said Canning Company caused said suit to be brought in the name of A. W. Langdon and A. W. Woodward, stockholders, when in fact the only parties in interest in said suit are your petitioners and the Marshall Canning Company, as will appear by the original bill filed herein and this cross-petition, wherefore and by reason of which your petitioners are deprived of its rights to

141 sell said goods and pay themselves, or foreclose said chattels mortgage by notice and sale, and hence were compelled to bring this suit.

Par. 13. Your petitioners further shows to the court that on or about the 17th day of October, A. D. 1884, the defendants, The Marshall Canning Company, H. C. Young, and A. T. Birchard, com-

burring and confiderating with the plaintiffs, A. W. Langdon and A. W. Woodward, for the purpose of delaying your petitioners in the collection of the notes and mortgages sued on herein, and for the purpose of cheating your petitioner out of its claims sought to be received in this cross-action, caused the plaintiffs in this suit to bring an action against your petitioner and
142 others, and for that purpose and with that intent, on or about the 18th day of October, 1884, the plaintiffs, A. W. Woodward and A. W. Langdon, commenced thereon action in the district court of Marshall county, Iowa, by filing the original petition in this case, and also in said action said plaintiff caused a writ of injunction to be issued from said district court and served on your petitioner enjoining and restraining your petitioner from the possession of; wherefore your cross-petitioner, Thurber, Whyland & Co., prays judgment against the defendant, The Marshall Canning Company, for the amount found due on the two promissory notes set out herein
143 and decree foreclosing both the real estate and chattel mortgages herein set out given to secure said notes, and that plaintiff be allowed the sum of five hundred dollars attorney's fee, as provided in said notes and mortgages, in addition to the amount due on said notes, and that said sums be declared a special lien on the mortgaged property, to date from the date of said mortgages, to wit, July 28, 1884, and that said decree provide for a special execution against the mortgaged property to make the amount of said judgment, and that your petitioners have such further and other relief as may be equitable and just in the premises, as in duty bound they will ever pray.

THURBER, WHYLAND & CO.,
By BINFORD & SNELLING, *Sol'rs.*

144 STATE OF IOWA, *Marshall County:*

I, T. Binford, being duly sworn, on my oath, say: I am of council for cross petitioners Thurber, Whyland & Co., and have in my possession the notes, mortgages, and contracts herein set out; that said cross-petitioners, and each member thereof, are none-residents of the State of Iowa, and are now absent from said State; that the allegations contained in said cross-petitioners' — are true, as I verily believe.

T. BINFORD.

Subscribed and sworn to before me and in my presence by the above-named T. Binford, this 22nd day of November, A. D. 1884, as witness my hand and seal notorial.

W. E. SNELLING,
Notary Public, Marshall County.

145 This indenture, made the 28th day of July, A. D. eighteen hundred and eighty-four, between The Marshall Canning Company, of Marshall county and State of Iowa, of the first part, and Thurber, Whyland & Co., of New York county and State of New York, of the second part, witnesseth, that the said part- of the first

part, for and in consideration of the sum of forty-one thousand two hundred and fifty-one $\frac{59}{100}$ dollars, the receipt of which is acknowledged, do, by these presents, grant, bargain, sell, and convey unto the said party of the second part, heirs and assigns, forever, the following-described real estate lying and being situated in the county of Marshall and State of Iowa, to wit: Beginning at a
146 point one hundred and five (105) rods twelve and $\frac{4}{100}$ (12.04) links south, and ten (10) rods and four $\frac{4}{100}$ (4.04) links east of the northwest corner of the east half of the northwest quarter of section thirty-six (36), in T. P. 84, R. 18, being at south line of tract sold M. Healin, running thence east on south line of same thirty-five (35) rods and nine and $\frac{1}{2}$ ($9\frac{1}{2}$) links to center of Lime Creek; thence following said creek northeasterly to east line of the northwest quarter of said section; thence south sixty-six (66) rods and twenty-two (22) links to north line of public highway; thence north ($81\frac{1}{2}°$) west on north line of highway, seventy
147 (70) rods and one (1) link to east line of Binford & Webster's addition; thence north twenty-three (23) rods eighteen and $\frac{1}{5}$ ($18\frac{1}{5}$) links to beginning, containing 16 $\frac{3}{100}$ acres, being lot 4 of subdivisions of N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and all of lot two (2) of subdivision of S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of said sec. 36, not heretofore conveyed by said first party, also out lot C of Binford & Webster's addition to Marshall, also the tract beginning at the northwest corner of out lot C aforesaid, and running north sixty-six (66) feet to southwest corner of that part of out lot B of said addition, conveyed by said Webster to said Healin; thence east $164\frac{1}{5}$ feet to east line of said out lot B; thence south sixty-six (66) feet to northeast corner of said out lot C; thence west one hundred and sixty-five (165) feet to beginning,
148 containing on last tract and said out-lot C 1.45 acres; To have and to hold the premises above described, with all the appurtenances thereto belonging, unto the party of the second part, and to its heirs and assigns forever. The said party of the first part hereby covenanting that the above described premises are free from any incumbrance except six thousand dollars held by S. R. Lucas, and it will warrant and defend the title unto the said party of the second part, it heirs and assigns, against all persons whomsoever lawfully claiming the same: Provided always, and these presents are upon this express condition, that if the said Marshall
149 Canning Company, its heirs, executors, or administrators shall pay or cause to be paid to the said Thurber, Whyland & Co., its executors, administrators, or assigns, the sum of sixteen thousand two hundred fifty-one and $\frac{59}{100}$ dollars on the 28th day of January, 1885, twenty-five thousand on the 28th day of January, 1885, with interest thereon at the rate of eight per centum per annum, payable annually, all interest to bear eight per cent. interest after maturity from year to year until paid according to the tenor and effect of the two promissory notes of the said Marshall Canning Company, payable to the order of Thurber, Whyland & Co. six months after date, and bearing even date herewith, then these presents to be void; otherwise, to remain in full force. And it is further
150 agreed that if default shall be made in the payments of said

sums of money, or any part thereof, principal or interest, or if the taxes assessed on the above described real estate shall remain unpaid for the space of three months after the same are due and payable, then the whole indebtedness shall become due, and then the part of the second part, heirs and assigns, may proceed by foreclosure, or in any other lawful mode, to make the amount of said note, together with all interest and costs and all taxes and assessments accrued on said real estate, together with a reasonable fee for plaintiff's attorneys, out of said real estate.

The $25,000.00 note above referred to is given to secure the
151 mortgage herein for short time loans and advance of money to mortgager, as shown by contract on back thereof. And wife of said — hereby relinquishes right of dower in the real estate herein mentioned, subject to the above reservations and conditions.

In testimony whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written.

MARSHALL CANNING CO.,
By H. C. YOUNG, *President.*

STATE OF IOWA, }
Marshall County, } ss:

Be it remembered that on the 28th day of July, A. D. 1884, before me, the undersigned, a notary public in and for said county, came Henry C. Young, as president of the Marshall Canning Company, of Marshalltown, to me personally known to be the identical
152 person whose name is subscribed to the foregoing — president of said company — deed as grantor, and acknowledged the instrument to be the voluntary act and deed of said company, and that said company executed the same for the purpose therein mentioned, and seal of said company is affixed hereto.

Witness my hand and notarial seal, the day and year last above written.

J. F. MEEKER,
Notary Public.

153 STATE OF IOWA, *Marshall County:*

Be it remembered that on this 28th day of July, A. D. 1884, before me, T. Binford, a notary public in and for said county, came Henry C. Young, the president of the Marshall Canning Company of Marshalltown, Iowa, to me personally known to be the identical person whose name is affixed to this mortgage as the president of the grantor, the corporation herein mentioned, and who, by me being duly sworn, deposes and says that he resides in Marshalltown aforesaid in said county; that he is the president of the Marshall Canning Company; that the seal affixed to the written indentures is the corporate seal of said Marshall Canning Company, and
154 was affixed to within indenture by order of said directors for the uses therein expressed, and that he did, by like order, *did* subscribe his name thereto, as president of the Marshall Canning

Company, and that said instrument is his own true and voluntary act and deed, as well as that of the Marshall Canning Company.

[L. S.] J. F. MEEKER,
Notary Public, Marshall Co., Iowa.

155 Mortgage. The Marshall Canning Co. to Thurber, Whyland & Co. Exhibit A.

STATE OF IOWA, }
Marshall County, } *ss:*

Filed for record this 5th day of August, A. D. 1884, at 2.45 o'clock p. m., and recorded in book 128, page 341.

L. H. JENNINGS,
Recorder of Marshall Co.,
By G. D. VILES, *Deputy.*

156 EXHIBIT "B."

Chattel Mortgage.

Know all men by these presents, that I, Marshall Canning Company, of the county of Marshall and State of Iowa, in consideration of the sum of forty-one thousand two hundred and fifty-one $\frac{59}{100}$ dollars to me in hand paid by Thurber, Whyland & Co., of New York city, of party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and do by these presents grants and convey unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels, to wit: Nine cutting machines, two tin cutting machines, two Merrill & Soule's patent corn cookers, six retorts and fixtures, two boilers (60 horse-power each), one
157 fifteen horse-power engine, all belting, shafting, pulleys, tools, utensels, and implements of every kind and character, movable and unmovable, all tin cans, tin plates, boxes, box stock, box lumber, tables, all material manufactured, unmanufactured, or in process of manufacture, all stock of every kind and character manufactured, unmanufactured, or in process of manufacture. All of said goods, chattels, and property being in or on the building and premises known as the factory and grounds of the Marshall Canning Co., in Marshalltown, Marshall county, Iowa. Also all canned goods and tin cans which may hereafter be manufactured at, in, or on said premises, or which may hereafter be brought upon said prem-
158 ises, and all stock and material manufactured or *or* unmanufactured, machinery, tools, fixtures, utensils, and implements of every kind hereafter purchased and brought upon said premises, be in transit thereto or manufactured thereon. To have and to hold the same forever. And I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said Marshall Canning Company shall pay to the said Thurber, Whyland & Co., its heirs, assigns, etc., his three promissory notes, dated July 28, 1884, and described as follows, to wit:

One for sixteen thousand two hundred and fifty-one and $\frac{59}{100}$ dollars due six months after date, and one other note of twenty-five thousand dollars, due six months after date, which last note [is] given to *to* secure said Thurber, Whyland & Co. for loans and advances to be made by said Thurber, Whyland & Co. to said Marshall Canning Co., as shown by contract on back of said note, with interest at the rate of 8 per cent. per annum, according to the tenor thereof; and these presents to be void; otherwise in full force. And I, the said Marshall Canning Company, do hereby covenant and agree, to and with the said Thurber, Whyland & Company, that, in case of default made in the payment of the above-mentioned promissory note, or in case of my attempting to dispose of or remove from said county of Marshall the aforesaid goods and chattels, or any part thereof, or whenever the said mortgagee shall have cause so to do, then, and in that case it shall be lawful for the said mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due, or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property, and Marshall Canning Company; the said mortgagor, hereby further covenants and agrees with said Thurber, Whyland & Co. that in the event suit is brought on this mortgage for foreclosure thereof, then and in that case, as attorney's fees, the money remaining after paying said sums, if any, to be paid on demand to the first part. Said sale to take place on said premises in the county of Marshall and State of Iowa after giving at least ten days' notice thereof by posting up written notices in three public places in said county. And I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time, until said property be sold, and to give a bill of sale to the purchaser thereof, which shall be conclusive as to the regularity of all proceedings connected herewith, and convey absolutely all of my right and title therein.

Witness my hand and seal, this 28th day of July, 1884.

[s. s.] (Signed) MARSHALL CANNING COMPANY,
By H. C. YOUNG, *President.*

STATE OF IOWA, }
Marshall County, } *ss:*

Be it remembered that on this 28th day of July, A. D. 1884, before me, the undersigned, a notary public in and for said county, personally appeared Henry C. Young, president of the Marshall Canning Company, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as grantor, and acknowledged the same to be his voluntary act and deed, and the voluntary act and deed of the Marshall Canning Company.

Witness my hand and notarial seal, the day and year last above written.

[s. s.] J. F. MEEKER,
Notary Public.

164 STATE OF IOWA, *Marshall County:*

Be it remembered that on this 28th day of July, 1884, before me, T. Binford, a notary public in and for said county, came Henry C. Young, president of the Marshall Canning Company, of Marshalltown, Iowa, to me personally known to be the identical person whose name is affixed to this mortgage as the president of the grantor, the corporation herein mentioned, and who, by me being duly sworn, deposes and says, that he resides in Marshalltown, Iowa, in said county; that he is the president of the Marshall Canning Company; that the seal affixed to the within enclosed is the
165 corporate seal of said Marshall Canning Company, and was affixed to within indenture by order of said directors for the uses therein expressed, and that he did by like order subscribe his name thereto as president of the Marshall Canning Company, and the said instrument is his own true and voluntary act and deed as well as that of the Marshall Canning Company.

J. F. MEEKER,
Notary Public, Marshall Co., Iowa.

Endorsed: Chattel mortgage from the Marshall Canning Company to Thurber, Whyland & Co., "Ex. B," State of Iowa, Marshall county, *ss.*, filed for record the 5th day of August, A. D. 1884, at 2.45 o'clock p. m., and recorded in book 137, on page 328. L. A. Jennings, recorder.

166 EXHIBIT C.

$16,251.59. No. ——. MARSHALLTOWN, IOWA, *July 28th*, 1884.

Six months after date the Marshall Canning Co. promises to pay to Thurber, Whyland & Co. or order sixteen thousand two hundred fifty-one & $\frac{59}{100}$ dollars payable at Importers and Traders' National Bank, New York City, with interest at 8 per cent. per annum, payable annually 8 per cent. on interest due, and if action is commenced hereon a reasonable attorneys' fee for collection, and hereby consent that any justice of the peace may have jurisdiction on this note.

MARSHALL CANNING CO.,
H. C. YOUNG, *President.*

167 EXHIBIT D.

The contract on the back of said note is part hereof.

$25,000.00. No.——. MARSHALLTOWN, IOWA, *July 28th*, 1884.

Six months after date I promise to pay to Thurber, Whyland & Co. twenty-five thousand dollars, payable at Importers and Traders' National Bank, New York city, with interest at 8 per cent. per

annum, payable annually 8 per cent. on interest due, and if action is commenced hereon a reasonable attorneys' fee for collection, and hereby consent that any justice of the peace may have jurisdiction on this note.

MARSHALL CANNING CO.,
By H. C. YOUNG, *President.*

168 The within note and mortgages securing it are given and to be held as collateral security to indem*m*nify and protect payee of the within for time loans, and advance to be made by said Thurber, Whyland & Co. to said Marshall Canning Company in carrying on its business at Marshalltown, Iowa, and whenever all money actually advanced to said Canning Company by said Thurber, Whyland & Co. on said short time loans with 8 per cent. interest thereon is paid to said Thurber, Whyland & Co., this note is thereby fully paid shall be returned, and the mortgage securing it shall be returned, and the mortgage securing it shall be cancelled of record. This is also to indem*m*nify the payee herein for
169 all sums paid as indorser of the paper of said Canning Company.

In consideration of the foregoing agreements of Thurber, Whyland & Co. and the Marshall Canning Company until January 1st, 1885.

BEVEREDGE & DEMEY.

We join in above so far as relates [to] all notes or acceptances to which J. K. Armsby & Co. are a party.

FIRST NATIONAL BANK OF CHICAGO,
L. D. GAGE, *V. P.*
FIRST NATIONAL BANK OF MARSHALLTOWN,
GEO. GLICK, *Pt.*
HIBBARD, SPENCER, BARTLETT & CO.,
F. F. SPENCER, *P. P. C.*

170 EXHIBIT E.

Know all men by these presents, that in consideration of the advances of twenty-five thousand dollars, during the packing season of 1884, to the Marshall Canning Company, to be used by Thurber, Whyland & Co., we hereby appoint Thurber, Whyland & Co., of New York, as trustees, to take possession of our property and canning factory at Marshalltown, Iowa, sell the pack thereof, and apply the proceeds to paying themselves all advances they may make, and the debt we now owe them of $16,251.54, and apply the surplus to the payment of the claims of our creditors.

Given under our hand and corporate seal, this 2nd day of August, A. D. 1884.

MARSHALL CANNING CO.,
By H. C. YOUNG, *President.*

We hereby assent to the above.

171 J. K. ARMSBY & CO.

We accept the within trusteeship, Aug. 5, 1884.

THURBER, WHYLAND & CO.

172 Ex. E.

Know all men by these presents, that we, Thurber, Whyland & Co., of New York, will agree with the Marshall Canning Company, of Marshalltown, Iowa, to advance them sufficient money, not to exceed twenty-five thousand dollars all told, during the packing season of 1884 and prior to January 1st, 1885, providing they will repay us the debt they now owe us of $16,251.54 and said advances prior to January 1st, 1885, and will obtain the consent of their creditors not to bring any suits or file any bills for the purpose of collecting their claims until after January 1st, 1885.

THURBER, WHYLAND & CO.

173 Know all men by these presents, that we, Thurber, Whyland & Co., of New York, will agree with the Marshall Canning Company, of Marshalltown, Iowa, to advance them sufficient money, not to exceed twenty-five thousand dollars all told, during the packing season of 1884.

174 & 175 *Marshall Canning Co., Marshalltown, Iowa, in Ac. with Therber, Whyland & Co., of New York.*

Dr.

1884.			
Aug. 18.	To cash draft, W. A. Parshall		$1,500 00
11.	" " W. J. Morrison		75 00
15.	" " W. A. Parshall		2,500 00
18.	" " W. A. Parshall		1,565 36
"	" " W. J. Morrison		1,175 15
19.	" " do.		3,152 34
23.	" " First National Bank		1,000 00
22.	To m'd'se, 600 bill heads, & postage		1 30
29.	" cash d'ft, 1st Nat. Bank		1,256 05
29.	" " " " "		1,000 00
Sep. 1.	" " A. G. Glick		50 00
2.	" " W. J. Morrison		1,000 00
5.	" " do.		1,000 00
9.	" " A. G. Glick		1,000 00
"	" " "		1,185 82
"	" " "		50 00
11.	" " W. J. Morrison		1,000 00
10.	M'd'se, freight allowed P. H. Kelly		71 55
12.	Cash, 1st National Bank		2,543 01
"	" " "		1,000 00
13.	" " "		1,151 15
"	" " "		1,000 00
16.	" " "		1,000 00
"	" " "		623 06
19.	" A. G. Glick		1,000 00

1884.			
Sep. 12.	Cash, m'd'se, fr't allowed P. H. Kelly		834 65
13.	" " 20,000 labels		35 00
22.	" cash, 1st Nat. Bank		500 00
23.	" " " "		500 00
"	" " " "		500 00
25.	" " " "		500 09
22.	M'd'se, fr't allowed P. H. Kelly & Co.		36 90
26.	Cash, 1st Nat. Bank		2,388 62
25.	" bills payable, due Nov. 21		2,106 37
30.	" 1st Nat. Bank		500 00
"	" A. G. Glick		75 00
19.	M'd'se, swells allowed C. T. Nevrey Co.		270 30
24.	" fr't allowed Stewart Bros.		14 10
"	" " " J. H. Merrell & Co.		30 00
Oct. 2.	Cash, 1st Nat. Bank		1,000 00
3.	" " "		500 00
4.	" " "		616 45
"	" Higman & S.		43 70
6.	" 1st Nat. Bank		500 00
7.	" " "		500 00
"	M'd'se, fr't all'd Goddard, Peck & Co.		100 00
9.	Cash, 1st Nat. Bank		1,547 93
10.	" " "		1,204 99
11.	" " "		500 00
13.	" " "		500 00
"	" A. G. Glick		50 00
11.	M'd'se, swells all'd Adams, McNeil & Co.		6 08
14.	Cash, 1st Nat. Bank		935 97
17.	" " "		500 00
18.	" " "		500 00
"	" " "		907 04
"	C. H. Smith, for fr't on goods del'd in Chicago. See cr., Oct. 30		44 60
	Amount forward		$44,347 49

Cr.

1884.			
Oct. 31.	By m'd'se, freight on 400 c. corn goods to Chicago		830 00
Nov. 7.	Note due Nov. 7, Adams, McNeil & Co.		1,000 00
Oct. 21.	Cash, J. S. Carlysle, $110.00; less dis., 2.30		107 80
Dec. 12.	Note due Dec. 12, W. G. Crank		105 00
Oct. 18.	Cash, Clark, Tingley & Co., $200.00; less dis., $4.00		196 00
4.	" Goddard, Peck & Co., $2,000; less $40 dis.,		1,960 00
31.	" P. P. Gillespie, $105; less dis., 72		104 28
Sep. 12.	" P. H. Kelly, Morse & Co., $1,000; less dis., 20.00		980 00

1884.			
Sep. 9.	Cash, P. H. Kelly, Morse & Co., $2,232.50; dis., $33.48	$2,199	02
20.	" P. H. Kelly, Morse & Co., $682.50; dis., 10.23	672	27
Oct. 20.	" P. H. Kelly, Morse & Co., $682.50; dis., 10.23	672	27
20.	" P. H. Kelly, Morse & Co., $1,000.00; dis., 20.00	980	00
Sep. 19.	C. S. Morey, Mor. Co., 2,000.00; dis., 30.00	197	00
18.	J. H. Merrill & Co., $840.00; dis., 12.00	827	40
Nov. 11.	Note, E. C. Palmer & Co., due Nov. 11th	851	50
Dec. 6.	" Pool Gilman, due Dec. 6th	190	00
Nov. 5.	" Prouty & Pratt, due Nov. 5th	1,240	00
Oct. 14.	Cash, Rumpp, Hosford & Herring, $275; dis., 2.25	272	75
Sep. 12.	" Sprague, Warner & Co., $1,900; less dis., $57.00	1,843	00
18.	" Sprague, Warner & Co., $1,150; less dis., $34.50	1,115	00
24.	" Stewart Bros., $770; less dis., $11.53	758	45
Dec. 6.	Note, Bell, Smith & S., due Dec. 6th	104	00
Sep. 24.	Thurber, Whyland & Co., $690.00; dis., $10.35	679	65
Oct. 6.	" " " $197.50; dis., $2.96	194	54
Sep. 15.	Warfield, Howell & Co., $800.00; dis., 16.00	784	00
27.	S. H. Watson, Oug. Co.	490	00
20.	Thurber, Whyland & Co., $1,005.75. See ch. $15.08	1,005	75
	Amount forward	$21,333	18

176 & 177. *Marshall Canning Company, Marshalltown, Iowa, in Acc. with Thurber, Whyland & Co., New York.*

DR.

1884.	To am't brought forward	44,347	49
Oct. 20.	To cash, A. G. Glick	25	00
21.	" 1st Nat. Bank	163	27
24.	" " "	199	45
23.	" mdse. freight allowed E. C. Palmer & Co.	50	30
"	" mdse. freight allowed Prouty & Pratt	29	40
"	" mdse. freight allowed P. H. Kelly & Co.	37	50
"	" mdse. freight allowed P. H. Kelly & Co.	35	85
Sep. 20.	" 1½ dis., T. Whyland & Co., bill $1,005.75	15	08
Nov. 1.	" com. on 8,048 c. tomatoes, &c., @ 10 ct. per case	804	80

1884.				
Nov. 1.	To cash, com. on 10,330 c. corn, @ 15 ct. per case	$1,549 50		
1.	" interest to date	230 84		
				$47,488 48
				$47,488 48

1884.		
Nov. 1.	To balance brought down	26,155 30
	Add goods returned from Still, Johnson & Co.	2,000 00
		28,155 30

CR.

1884.	By amount brought forward	21,333 18	
Nov. 1.	To balance	26,155 30	
			47,488 48
			47,488 48

Goods sold, but not yet paid for:

C. & A. Anderson	89 50
John Blaut & Son	269 00
D. G. Bardow & Bro.	105 00
Bowler & Taylor	158 50
Brown & Healy	40 00
Eau Claire Groc. Co.	800 00
Chas. Hewitt	840 00
Joannes Bros.	190 00
P. H. Kelly Merc. Co.	1,117 50
" "	1,407 50
" "	1,000 00
Moriarty, Egan & Co.	722 50
Pelger Bros.	50 00
Sprague, Warner & Co.	4,950 00
Steel, Johnson & Co.	3,000 00
C. Scherekberg & Co.	720 00
Scott & Adams	49 80
Seyl & Van Craenbrock	55 00
	$15,564 30

E. & O. E.
New York, Nov'r 1st, 1884.

THURBER, WHYLAND & CO.
WHITTAKER.

178 Endorsed: In district court, Marshall county. A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Company, Thurber, Whyland and Company, H. C. Young, A. T. Birchard, William J. Morrison. Cross-petition of Thurber, Whyland & Co. *vs.*

The Marshall Canning Company. Filed Nov. 26, 1884. D. R. McLeran, clerk. Paid, $1.50. Binford and Snelling, att'ys for cross-petition.

179 *Notice.*

To the Marshall Canning Company:

You are hereby notified that on the 26th day of November, A. D. 1884, there was filed in the office of the clerk of the district court within and for the county of Marshall the cross-petition of Thurber, Whyland & Co. against you, The Marshall Canning Company, in the case now pending in said court, wherein A. W. Woodward and A. W. Langdon are plaintiffs and you, The Marshall Canning Company, is defendant, with Thurber, Whyland & Co. (cross-petitioner herein), H. C. Young, A. T. Birchard, and William J. Morrison, co-defendants, claiming the foreclosure of the real estate, mort-
180 gage, and chattel mortgage set out therein, and judgment against you for the amount found due thereon, and for other relief:

Now, unless you appear and make defense thereto at or before noon of the second day of the next December term of said court, to be begun and held at Marshalltown, Iowa, on the 8th day of December, A. D. 1884, your default will be entered and a judgment and decree rendered thereon as prayed for in said cross-petition.

Dated this 26th day of November, A. D. 1884.

THURBER, WHYLAND & CO.,
Plaintiffs.

By BINFORD & SNELLING.

181 STATE OF IOWA, }
Marshall County, } *ss:*

Received the within notice the 26th day of Nov., 1884, and I hereby certify that I served the same on the persons named below, by reading the same to them and delivering to them a true copy of the same, at the time and place set opposite their names:

Name of Persons.	Month.	Day.	Year.	Township.	County.	State.
The Marshall Canning Company, H. C. Young, president of said company	Nov.	26.	1884.	Marshall.	Marshall.	Iowa.

GEO. B. McCORD,
Sheriff Marshall County, Iowa,
By H. D. EAST, *Deputy.*

Fees:

Service	50c.
Copies	25c.
Mileage	10c.
Total	85 cents.

182 Endorsed: 36–35. District court, Marshall county. Thur-

ber, Whyland & Company *vs.* The Marshall Canning Company. Original notice. This notice came to hand the 26th day of November, A. D. 1884.

GEO. B. McCORD,
Sheriff of Marshall County.
B. & L.,
Attorneys for Plaintiff.

183 *Petition of Defendants Thurber, Whyland & Co. and Wm. J. Morrison for Removal to the Circuit Court of the United States for the Southern District of Iowa, Central Division.*

STATE OF IOWA, *Marshall County*:

In District Court for said County.

A. W. WOODWARD, A. W. LANGDON

vs.

THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., WM. J. MORRISON, H. C. YOUNG, and A. T. BIRCHARD.

To said district court:

Your petitioners, the above-named defendants, Thurber, Whyland & Co., respectfully show to the honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of
184 different States, and that your petitioners and each of them were, at the commencement of this suit, and still are, non-residents of the State of Iowa.

That the above-named petitioner, Thurber, Whyland & Co., was, at the time of the commencement of this suit, and still is, a citizen of the State of New York; that said Thurber, Whyland & Co. is a copartnership, whose principal place of business at the time of the commencement of this suit was and still is in the State of New York.

That said firm is composed of Horace K. Thurber (a special partner), Francis B. Thurber, Albert E. Whyland, Jacob S. Gates, William A. Parshall, Henry B. Kirkland, who were each a member of said firm at the time of commencement of said suit, and is still a
185 member of said firm. That each of the above-named members of said firm was, at the commencement of this suit, and still is, a citizen of the State of New York, and Alexis Godillot, Jr., who was a member of said firm at the time of commencement of said suit and is still such member, and that said Alexis Godillot, Jr., was, at the commencement of said suit, and still is, a citizen of the State of Connecticut. That the plaintiff, A. W. Langdon, was, at the commencement of this suit, and still is, a citizen of the State of New York.

That the other plaintiff, A. W. Woodward, was, at the commencement of this suit, and still is, a citizen of the State of Illinois; that the defendants in this action, "The Marshall Canning Company,"

"H. C. Young," and "A. T. Birchard," and each of them,
186 was, at the commencement of this suit, and still is, a citizen of the State of Iowa.

Your petitioner states that in said suit above mentioned there is a controversy, which is wholly between citizens of different States, and which can be fully determined as between them, without the presence of any other party to this suit—a controversy which is fully set out and explained in the cross-petition herein filed by your petitioners against the defendant, The Marshall Canning Co., the determination of which controversy will settle all matters in this suit in which your petitioners is interested.

And your petitioners offers herewith a bond, with good and sufficient security, for their entering in said circuit court of the
187 United States for the southern district of Iowa, central division, on the first day of its next session, a copy of all the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And they pray this honorable court to proceed no further herein, except to make the order of removal required by law, and to cause the record herein to be removed into said circuit court of the United States in and for the southern district of Iowa (Central division), as they will ever pray.

THURBER, WHYLAND & CO.,
By BINFORD & SNELLING,
Their Solicitors.

188 STATE OF IOWA, }
Marshall County, } *ss:*

I, T. Binford, on my oath say: I am of counsel for petitioners herein; that each member of the plaintiff (a copartnership) is now absent from the State of Iowa; that I am acquainted with the matters and things stated in the foregoing petition, and say they are true, as I verily believe.

(Signed) T. BINFORD.

Subscribed and sworn to before me and in my presence by the above-named T. Binford, this 27th day of November, A. D. 1884, as witness my hand and seal notarial.

(Signed) W. E. SNELLING,
Notary Public, Marshall County, Iowa.

189 Endorsed: State of Iowa, Marshall county. A. W. Woodward, A. W. Langdon *vs.* the Marshall Canning Company, Thurber, Whyland & Co., William J. Morrison, H. C. Young, A. T. Birchard. Petition for removal to the circuit court of the United States for the southern district of Iowa, central division of Thurber, Whyland & Co. Filed Nov. 27, 1884. (Signed) S. R. McLeran, clerk.

190 Know all men by these presents, that we, Thurber, Whyland & Co., as principal, and Geo. Glick, as surety, are held and firmly bound unto The Marshall Canning Company, A. W.

Woodward, A. W. Langdon, H. C. Young, and A. T. Birchard, in the penal sum of five hundred dollars, the payment whereof, well and truly to be made unto the said Marshall Canning Company, A. W. Woodward, A. W. Langdon, H. C. Young, and A. T. Birchard, their heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Thurber, Whyland & Co. having petitioned the district courts of Marshall county, State of Iowa, for the removal of a certain cause therein pending,
191 wherein A. W. Langdon and A. W. Woodward are plaintiffs, and The Marshall Canning Company, A. T. Birchard, H. C. Young, Thurber, Whyland & Co., and W. J. Morrison are defendants, in which action the defendant, Thurber, Whyland & Co., have filed a cross petition against the defendant, The Marshall Canning Company, to the circuit court of the United States in and for the southern district of Iowa, central division:

Now, if the said Thurber, Whyland & Co., your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall and truly pay all costs that may be awarded by the said circuit
192 court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise, in full force and virtue.

Witness our hands and seals, this 26th day of Nov., A. D. 1884.

THURBER, WHYLAND & CO.,
By BINFORD & SNELLING, *Att'ys.*
GEO. GLICK.

STATE OF IOWA, }
Marshall Co., } *ss:*

I, George Glick, being first duly sworn, on my oath do say that I am a resident of Marshall county, State of Iowa, and that surety in the foregoing bond, and that I am worth the sum of five thousand dollars beyond the amount of my debt, and that I have property in Marshall county, State of Iowa, liable to execution, equal to five thousand dollars.

GEO. GLICK.

193 Sworn to before me and subscribed in my presence by the said Geo. Glick, this 26th day of November, 1884.

[s. s.] W. E. SNELLING,
Notary Public.

Endorsed: A. W. Woodward *vs.* Marshall Canning Co. Bond filed Nov. 27th, 1884, and approved. L. R. McLeran, clerk.

194 *Certificate to Transcript.*

STATE OF IOWA, }
Marshall County, } *ss:*

I, S. R. McLeran, clerk of the district court of the Sate of Iowa, in and for said county, do hereby certify that the foregoing is a true

and perfect transcript of the record in the above-entitled cause, also a true copy of all papers filed, to wit, inj. bond & oath of receiver, appeal bond, obj. to removal, pet. for removal, pet. & bond for removal, mo. for con., obj. to app. of receiver's statement, cross-pet., chattle mort., R. E. mort., original notice, order of H. C. Henderson, aff. in resistance of mo. for increase of bond, notice, mo. & aff's for increase my bond, original notice, writ of inj., pet. in equity, chattel mort., R. E. mort., notice to show cause against granting writ. inj., pet. for removal, notice of app. for app. of receiver, as fully as the
195 same remains on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Marshalltown, this 5th day of December, A. D. 1884.

[SEAL.] (Signed) S. R. McLERAN, *Clerk.*

196 Endorsed: 2061. Equity. In circuit court United States for the southern district of Iowa, central division. A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Company, Thurber, Whyland & Co. *et al.* Filed Dec. 8, 1884. Ed. R. Mason, clerk.

197 And on the 13th day of January, 1885, an amendment to transcript from the district court of Marshall county was filed in said cause in the words and figures following, to wit:

198 In the Marshall County District Court. In Vacation.

A. W. WOODWARD, A. W. LANGDON
vs.
THURBER, WHYLAND & COMPANY *et al.*

To the above-named defendants, or to Binford & Snelling, att'ys for Thurber, Wyland & Co., and Wm. J. Morrison:

You are hereby notified that the plaintiffs in the above action will, on the 29th day of November, 1884, at the office of Caswell & Meeker, in Marshalltown, Iowa, and at the hour of 8 o'clock p. m., apply to the Hon. H. C. Henderson, judge of the 11th judicial district of Iowa, for the appointment of a permanent receiver in the above case, as prayed for in the petition of plaintiffs and now on file in the clerk's office, in said case is pending, and by reason of the facts ap-
199 pearing in the petition and affidavits of defendants filed in support of their application for an increase of the injunction bond and in case.

CASWELL & MEEKER,
Att'ys for Pl'ffs.

We hereby accept service of the above notice, this 25th day of November, 1884.

BINFORD & SNELLING,
Att'ys for Thurber, Whyland & Co.
H. C. YOUNG,
President of Marshall Canning Co.

Endorsed: Notice of application for appointment of a permanent receiver. Filed Dec. 7, 1884. S. R. McLeran, clerk.

200 Now, on this 29th day of November, A. D. 1884, this cause came on for further hearing at chambers, on the motion of defendants, Thurber, Whyland & Co., for additional security in injunction proceeding, an- also an application of plaintiffs for appointment of a receiver, pursuant to adjournment and notice by pl't'ffs as to application for a receiver. Present: pl't'ffs, by Caswell & Meeker, and the defendant, Thurber, Whyland & Co., by Binford & Snelling. Defendant, Thurber, Wilder & Co., file objections to appointment of receiver, and additional showing that they had a filed a petition for removal of the cause to the Federal Court, and a bond, upon issue tendered by cross-bill of said Thurber, Whyland & Co., to foreclose the mortgages referred to in plaintiffs' original petition. Pl't'ffs object to the consideration of the matter of removal because *no*
201 notice of said matter has been served on them; that the judge at chambers has no authority to consider said matter; that the same matters have been presented and former petition for removal to the Federal Court, and the petition refused, and because the cause is not removable under the act or any act of Congress, and insisted upon hearing of the matters involved in the motion of defendant, Thurber, Whyland & Co., for additional security and the application for appointment of a receiver, and after fully hearing and considering of the several matters presented I find that the cause is not removable, and, therefore, refuse the petition therefore. Thurber, Wyland & Co. except.

I overrule the objections and additional objections of def't, Thurber, Whyland & Co., to appointment of a receiver, to which they except.

It is ordered that plaintiffs file a new injunction bond in
202 the penal sum of five thousand dollars, conditioned, as by law provided in such cases, with good security, to be approved by the clerk of the district court of Marshall county, where the suit is pending, said bond to be filed within fifteen days from this date, and in default thereof the injunction to be dissolved.

It is further ordered that Geo. Glick be, and he hereby is, appointed receiver to take possession of and preserve the property of the Marshall Canning Company, real and personal; but before entering upon the discharge of the duties of his office, he shall take the oath required by law, and file a bond, with security, to be approved by the clerk of the said district court, in a penalty of forty thousand dollars, conditioned to faithfully preserve the real property and preserve, care for, and dispose of the personal prop-
203 erty under the direction of the court or judge thereof, and otherwise, as required by law.

The receiver is hereby authorized to sell and dispose of all the canned goods now on hand as soon as practicable at not less than the ruling market price of goods of the same kind and quality, unless on application to receiver's authority to do so from the court or judge thereof.

The receiver may also fill any balance of orders heretofore authorized in my order, appointing said receiver as temporary receiver. He is also authorized out of proceeds of sale to pay all the reasonable expenses of preserving, boxing, and shipping the goods, to all of which orders respecting the appointment of the receiver, and the orders directing him how to proceed, as above set forth, the defendant, Thurber, Whyland & Co., duly except.

H. C. HENDERSON, *Judge.*

204 Endorsed: The district court of Marshall county. In vacation. A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Co., and Thurber, Whyland & Co. *et al.* Order of judge appointing Geo. Glick permanent receiver, increasing the injunction bond, and refusing to change the cause to the Federal court on petition of Thurber, Whyland & Co. Copy filed Dec. 1st, 1884. S. R. McLeran, clerk.

205 STATE OF IOWA, } *ss:*
Marshall County, }

Be it remembered that at a term of the district court of Iowa, holden in and for said county at the court-house in Marshalltown therein, on the 11th day of December, 1884, were present the Honorable H. C. Henderson, sole presiding judge of said court, Geo. B. McCord, sheriff of said county, and S. R. McLeran, clerk of said court, when the following proceedings were had, done, and entered of record, to wit:

A. W. WOODWARD *et al.* }
vs. } No. 3316.
MARSHALL CANNING CO. *et al.* }

And now, to wit, Dec. 11th, 1884, this cause coming on for hearing and ruling of the court on the petition for change in forum to the U. S. c. court; and the court being duly advised in the premises, the petition is denied, and defendant [to] the petition excepts.

206 *Certificate to Transcript.*

STATE OF IOWA, } *ss:*
Marshall County, }

I, S. R. McLeran, clerk of the district court of the State of Iowa, in and for said county, do hereby certify that the foregoing is a true and perfect copy of the order of H. C. Henderson, judge dist. court, appointing Geo. Glick permanent receiver, and notice of application for appointment of a permanent receiver and order of court on pet. for change of forum as fully as the same remains on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Marshalltown, this 12th day of December, A. D. 1884.

[SEAL.]

S. R. McLERAN, *Clerk,*
By E. H. DARNO, *Deputy.*

207 Endorsed: 2061. Eq. A. W. Woodward *et al. vs.* Thurber, Whyland & Co. *et al.* Transcript of notice of appointment of receiver, order of appointment of receiver, and order overruling petitions for change of place of trial. Filed Jan. 13, 1885. Ed. R. Mason, clerk.

208 And on the 9th day of December, 1884, the defendants, Thurber, Whyland & Co., by Binford and Snelling, their solicitors, filed in said cause a notice, motion, and affidavit to vacate the receivership and injunction herein, which said notice, motion, and affidavit were in the words and figures following, to wit:

209 *Notice.*

In the Circuit Court of the United States for the Southern Districts of Iowa, Central Division.

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING CO., THURBER, WHYLAND & CO., A. T. BIRCHARD, H. C. YOUNG, and W. J. MORRISON.

To Caswell & Meeker, attorneys for plaintiff-:

You are hereby notified that on Saturday, the 13th day of December, 1884, at one o'clock in the afternoon, at Iowa City, Iowa, the defendant, Thurber, Whyland & Co., will apply to the Hon. J. M. Love, judge of the said circuit court for the United States for the southern division of Iowa, for the vacation of the appoint-
210 ing Geo. Glick temporary receiver, and to dissolve the injunction heretofore granted. Said application will be based upon the motions and affidavits hereto attached, and the petition of plaintiff- in this case, and the cross-petition of Thurber, Whyland & Co. *vs.* The Marshall Canning Co., and all other pleadings and affidavits filed in this case; said application will be heard at chambers. You can appear and resist the same if you see proper.

BINFORD & SNEELING,
Att'ys for Def'ts, Thurber, Whyland & Co.

Service accepted of this notice and receipt of copy of same, and copies of motions to dissolve injunctions and vacating order appointing receiver, affidavit of Morrison acknowledged at Marshalltown, Iowa, this 6th day of December, A. D. 1884.

CASWELL & MEEKER,
Att'ys for Pl'ff-.

211 *Notice to Vacate the Order Appointing a Temporary Receiver.*

In the Circuit Court of the United States for the Southern District of Iowa, Central Division.

A. W. WOODWARD and A. W. LANGDON

vs.

THE MARSHALL CANNING CO., A. T. BIRCHARD, H. C. YOUNG, WM. J. MORRISON.

Comes now defendant, Thurber, Whyland & Co., and moves the court to vacate the order appointing George Glick temporary receiver for the following reasons:

First. Said order was made by the Hon. H. C. Henderson, judge of the district court of Marshall county, Iowa, without notice to this defendant and without any application being made therefor,
212 except the verbal request of plaintiffs' attorney, and not in the presence of this defendant or their attorneys.

Second. Defendants, Thurber, Whyland & Co., as shown by plaintiffs' petition and exhibits, were in possession of the property of the Canning Company as trustees for themselves, the Canning Company and all the creditors of the Canning Co., with one exception, and it does not appear from said petition, or in any other way, that defendant, Thurber, Whyland & Co., had or were about to make any dispositions of the property inconsistent with interests of the creditors of the Canning Company.

Third. It does not appear by said petition that the defend-
213 ant, Thurber, Whyland & Co., had or were about to place said property beyond the reach of that court, nor is it alleged in said petition that said defendants are insolvent or unable to respond in damages for any sum that might be adjudged against them.

Fourth. The petition shows the plaintiffs have no interest in this controversy, except, they may say, that of having their debts paid. But if their creditors are satisfied with the action of the trustees, plaintiff- cannot have a new trustee appointed, or a receiver, against the wishes of this defendant and the creditors of the Canning Co.

Fifth. By reasons of the matters and things set forth in
214 the petition of plaintiff-, affidavits heretofore filed, and cross-petition of Thurber, Whyland & Co., and affidavits of W. J. Morrison.

Sixth. There is no equity in the bill filed by plaintiff-.

Seventh. The petition and exhibits filed by plaintiff- show that the plaintiff- *is* not entitled to a receiver against the objection of this defendant or the creditors of the Canning Co.

Eighth. No fraud is alleged on that part of the Canning Co., nor of the defendants, Thurber, Whyland & Co.

Ninth. The petition on its face shows the *the* Canning Com-
215 pany is insolvent, and that the creditors of the Canning Co. are the only parties interested in the disposition of the property in controversy.

Tenth. The Canning Co. not being charged with fraud, the plaintiffs are not entitled to correct the irregularities of the Canning Co.

without first asking the Canning Co., the corporation, to correct them itself.

BINFORD & SNELLING,
Att'ys for Def't, Thurber, Whyland & Co.

216 *Motion to Vacate the Order Granting the Temporary Injunction.*

In the Circuit Court of the United States of the Southern District of Iowa, Central Division.

A. W. Woodward & A. W. Langdon
vs.
The Marshall Canning Co., Thurber, Whyland and Company, A. T. Birchard, H. C. Young, & *A. T. Birchard.*

Defendants, Thurber, Whyland & Co., — and moves the court to dissolve the injunction heretofore granted by the Hon. H. C. Henderson, judge of the district court of Iowa in and for Marshall county, for the following reasons:

First. There is no equity in the petition or bill.

217 Second. That plaintiffs are not entitled to the relief prayed for, or any other relief, upon the allegations of their petition.

Third. Plaintiffs have an adequate remedy at law.

Fifth. The affidavits heretofore filed in this case and that of W. J. Morrison, filed with this motion.

Fourth. The injunction was granted without notice, except to the corporation defendant, who is in collusion with plaintiff, and the order was made without authority of law.

Sixth. This action was brought by plaintiffs as stockholders to correct the irregularities of the corporation, without first asking the corporation itself to correct them, and no fraud is alleged on the part of the corporation.

218 Seventh. It is not claimed that the trustee-, Thurber, Whyland & Co., is insolvent or unable to respond in damages in any sum that may be adjudged against them.

Eighth. The injunction enjoined the defendant, Thurber, Whyland & Co., from the possession of property that belonged to them absolutely, and in which Canning Co., now plaintiff, claimed any interest.

Ninth. The corporation itself is the only party damaged by the irregularities complained of; consequently, the stockholders are not entitled to the injunction.

Tenth. The matters and things stated in the cross-petition

219 of Thurber, Whyland & Co. *vs.* The Marshall Canning Company.

BINFORD & SNELLING,
Att'ys for Def't, Thurber, Whyland & Co.

220 State of Iowa, *Marshall County:*

I, William J. Morrison, being duly sworn, on my oath say: I am agent of the defendant, Thurber, Whyland & Co., in the transaction

of their business with The Marshall Canning Company, defendant; that as such agent for said Thurber, Whyland & Co., as trustees, I have had full charge and control of all the transactions complained of by the plaintiffs in their petition filed in this cause.

That no goods have been sold or shipped by said Thurber, Whyland & Co., or by me, as their agent, except the price and terms were satisfactory to the defendant Canning Company, which was represented by defendants, Birchard & Young, directors of
221 said Canning Company; that in every sale this affiant consulted with said Young or Birchard, or both, in regard to the prices offered for any goods ordered, and obtained their consent thereto before such order was filled. This affiant says it is not true that goods have been shipped by these defendants without *bona fide* orders, as alleged in plaintiffs' petition; that all goods by this affiant, as such agent or defendants, were shipped in good faith and with the knowledge and consent of said Canning Company and said directors; that it is not true that said goods we- being hurriedly sold, for no goods were shipped except in the ordinary course of trade; that at the date of the granting the temporary injunction
222 herein and the appointment of a receiver there was in the warehouse of the defendant, Canning Company, from six to eight thousand dollars worth of goods that were sold and billed, and the defendant Canning Co. had received credit therefor on the account with defendant, Thurber, Whyland & Co., which goods, although belonging to Thurber, Whyland & Co., or to the persons to whom they had been sold, and in which the Canning Co. had no interest, were, by said injunction and order appointing the temporary receiver, placed beyond the control of the defendant, Thurber, Whyland & Co., and the persons to whom they had been sold and billed; that at the time of the issuing of said orders the affiant held many orders for goods, amounting to several
223 thousand dollars. That in every particular this affiant for Thurber, Whyland & Co. has complied strictly with the terms and conditions of the contracts and agreements whereby Thurber, Whyland & Co. were appointed trustee, and in no instance has the Canning Company, or any of the creditors, made complaint before the bringing of this suit. That prior to the commencement of this suit all parties had worked in harmony. That for the months of July, August, and September, 1884, this affiant for Thurber, Whyland & Co., with their money sent him from New York, sent him for that purpose, paid to H. C. Young, president of said company, his monthly salary of one hundred and fifty dollars for each month, and paid defendant, A. T. Birchard, his salary as treasurer
224 and secretary the sum of eighty-three and thirty-three one-hundredths dollars for each month, and to Merrill, superintendent, the sum of one hundred and twenty-five dollars per month, besides all other running expenses of said Canning Co. And paid the salary of the defendant- Young and Birchard as aforesaid for July, most of which was earned, if earned at all, before this defendant took control of said business.

Affiant further states that at the time that Thurber, Whyland &

Co. commenced advancing money to said Canning Co., said Canning Company had overdrafts at First National Bank of Marshalltown, Iowa, to the amount of two hundred and fifty dollars and over, which was also paid by this affiant as agent aforesaid.

225

WM. J. MORRISON.

Subscribed and sworn to before me and in my presence by William J. Morrison, this 5th day of December, A. D. 1884, as witness my hand and seal notarial.

[s. s.]

T. BINFORD,
Notary Public, Marshall Co., Iowa.

Endorsed: 2061. Eq. A. W. Woodward *vs.* Marshall Canning Company *et al.* Notice, motion, and affidavit to vacate receivership and injunction. Filed Dec. 9, 1884. Ed. R. Mason, clerk.

226 And on the 12th day of December, 1884, the defendants' Thurber, Whyland & Co. and Wm. J. Morrison, by Hubbard, Clark, and Dawley, and Binford and Snelling, their solicitors, filed in said cause a præcipe for appearance in said cause, which said præcipe is in the words and figures following, to wit:

227 *Prx. for App.*

United States Circuit Court, Southern District of Iowa.

A. W. Woodward, A. W. Langdon
vs.
The Marshall Canning Co., Thurber Whyland & Co., William J. Morrison, *et al.* } No. —.

The clerk of said court will please enter our appearance for defendants Thurber Whyland & Co. and William J. Morrison in above cause, and docket the same on — docket.

HUBBARD, CLARK & DAWLEY AND
BINFORD & SNELLING,
Att's for Thurber, Whyland & Co. and Wm. J. Morrison.

(Endorsed:) U. S. circuit court southern district of Iowa. No. 2061. Eq. Woodward *et al. vs.* Marshall Canning Co. Prx. for app. of def'ts. Filed Dec. 12, 1884. Ed. R. Mason, clerk.

228 And on the 13th day of January, 1885, the complainants by Nourse and Kauffman, their solicitors, filed in said cause a motion to remand the said cause of the district court of Marshall county, which said motion is in the words and figures following, to wit:

229 *Motion to Remand.*

In United States Circuit Court, Southern District of Iowa, Central Division.

A. W. WOODWARD, A. W. LANGDON
vs.
MARSHALL CANNING CO., THURBER, WHYLAND & CO., H. C. YOUNG

A. T. Birchard, and Wm. J. Morrison, and Cross-bill of Thurber Whyland & Co. *vs.* Marshall Canning Co.

Plaintiffs, A. W. Woodward and A. W. Langdon, now moves the court to strike this case from the docket and remand it to State court, for the reasons:

1st. That this court has no jurisdiction of this cause and of the parties thereto.

2nd. The cause is not removable and has not been removed, and this court has no jurisdiction.

230 3. That no petition and bond has ever been presented to the State court, but verily to a judge thereof in vacation.

4th. The controversy is not one between citizens of different States and there is no separable controversy therein.

NOURSE & KAUFFMAN,
Atty's for Pl'ff.

(Endorsed:) 2061. Eq. Woodward *et al. vs.* Marshall Canning Company. Motion to remand. Filed Jan. 13, 1885. Ed. R. Mason, clerk.

231 And on the 13th day of January, 1885, it being of the October term, 1884, in the record of the proceedings of said court, is the judgment entered in said cause, in the words and figures following, to wit:

United States Circuit Court, Southern District of Iowa, Central Division, October Term, 1884.

TUESDAY, *Jan. 13th*, 1885.

A. W. WOODWARD and A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., H. C. YOUNG, A. T. BIRCHARD & WM. J. MORRISON,
} No. 2061. Equity. Original Bill.

and

THURBER, WHYLAND & COMPANY
vs.
MARSHALL CANNING COMPANY.
} Cross-Bill.

This cause came on this day for hearing upon the motion of Thurber, Whyland & Co., defendants and cross-complainants, to dissolve the injunction and vacate the order appointing a receiver, heretofore

submitted at Keokuk. Complainants appear by Nourse &
232 Kauffman, and the defendants and cross-complainants, Thurber, Whyland & Co., appear by Binford and Snelling and Charles A. Clark, and the court being now fully advised in the premises, it is ordered that said motions be, and the same are hereby, overruled.

Thereupon complainants were given leave to file a motion to remand *nunc pro tunc* as of the — day of ——, 188–, the date at which said cause was heard at Iowa City, and the court being now fully advised in the premises, it is ordered that said motion to remand this cause be sustained, and that this cause be, and the same is hereby, remanded to the district court of Marshall county, Iowa, at the costs of Thurber, Whyland & Co.

It is therefore ordered, adjudged, and decreed that the defendants and cross-complainants, Thurber, Whyland & Co., pay the costs herein taxed at $—, and that execution issue therefor.

To all which rulings the defendants and cross-complainants, Thurber, Whyland & Co., at the time duly excepted and pray an appeal to the Supreme Court of the United States, which is allowed, and the supersedeas bond to be filed herein is fixed at the sum of
232½ one thousand dollars, with sureties to be approved by one of the judges of this court.

233 And on the 13th day of January, 1885, the supersedeas bond was filed in said cause, which said bond is in the words and figures following, to wit:

234 *Supersedeas Bond.*

In the United States Circuit Court in and for the Southern District of Iowa, Central Division.

A. W. WOODWARD, A. W. LANGDON

vs.

THE MARSHALL CANNING CO., THURBER, WHYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, & WILLIAM J. MORRISON.

Know all men by these presents, that Thurber, Whyland & Co., as principal, and Geo. Glick, as surety, are held and firmly bound unto A. W. Woodward and A. W. Langdon in the sum of one thousand dollars, to be paid to the said A. W. Woodward and A. W. Langdon, their executors, or administrators: To which payment well and truly be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executor-, ad-
235 ministrators, and successors, firmly by these presents, sealed with our seals, dated Jan'y 13, 1885. Whereas the above bounded Thurber, Whyland & Co. has procured and been allowed an appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled actions by the circuit [court] of the United States for the southern district of Iowa, central division:

Now, therefore, the conditions of this obligation *is* such that if the above-named Thurber, Whyland & Co. shall prosecute their

said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise, of full force and effect.

THURBER, WHYLAND & CO.,
By BINFORD & SNELLING,
Their Att'y-.

GEO. GLICK.

236 STATE OF IOWA, } *ss:*
Marshall County, }

I, Geo. Glick, the undersigned, being first duly sworn, for himself says: That he is the surety whose name is subscribed to the within and foregoing bond; that he is a freeholder, and a resident of the State of Iowa; that he is worth double the sum *second* by said bond beyond the amount of his debts and liabilities, to wit, the sum of five thousand dollars, and that he has property liable to execution in said State equal to the sum *of* secured in said bond, to wit, the sum of five thousand dollars.

GEO. GLICK.

Subscribed in my presence and sworn to before me by Geo. Glick, this 13th day of January, A. D. 1885, as witness my hand and seal notarial.

[SEAL.] T. BINFORD,
Not'r. Public, Marshall Co., Ia.

Approved:
J. M. LOVE, *Judge.*

237 Endorsed: 2061. Eq. A. W. Langdon, A. W. Woodward *vs.* The Marshall Canning Company, Thurber, Whyland & Co. *et al.* Supersedeas bond. Filed Jan. 13, 1885. Ed. R. Mason, clerk.

238 And on the 24th day of January, 1885, an original citation was filed in said cause in the words and figures following, to wit:

239 The United States of America to A. W. Woodward & A. W. Langdon, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on Wednesday, Feb'y 18th, 1885, pursuant to an appeal allowed & filed in the clerk's office of the United States circuit court in & for southern district of Iowa, central division, wherein Thurber, Whyland & Co. are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. M. Love, judge of the United States circuit court, southern district of Iowa, this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-five.

J. M. LOVE, *Judge.*

239½ [Endorsed:] No. 2061. Eq. A. W. Woodward *et al. vs.* Marshall Canning Co. *et al.* Citation. Filed Jan. 24, 1885. Ed. R. Mason, clerk.

Service of the within citation, with copy thereof in hand, is hereby acknowledged, this 23rd day of Jan'y, 1885, at Des Moines, Iowa.

NOURSE & KAUFFMAN,
Att'ys for Woodward & Langdon, Appellees.

240 The United States Circuit Court, Southern District of Iowa, Central Division.

I, Edward R. Mason, clerk of said court, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries in a certain cause, adjudicated in said court, wherein A. W. Woodward and others were plaintiffs and the Marshall Canning Co. and others were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with the acceptance of service endorsed therein, is hereto attached and herewith returned.

In testimony whereof, I subscribe my name and affix the seal of said court, at the city of Des Moines in said district, this 3rd day of February, 1885.

[SEAL.] EDWARD R. MASON,
Clerk U. S. Circuit Court Southern District of Iowa, at Des Moines.

Endorsed on cover: S. Iowa C. C. U. S. No. 1269. Thurber, Whyland & Company, appellant, *vs.* A. W. Woodward and A. W. Langdon. Filed February 20, 1885.